

MIAMI-DADE COUNTY PUBLIC SCHOOLS



**AUDIT OF QUESTIONED FINANCIAL TRANSACTIONS OF
DORAL ACADEMY CHARTER HIGH SCHOOL**

DECEMBER 2013

OFFICE OF MANAGEMENT & COMPLIANCE AUDITS

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA

Ms. Perla Tabares Hantman, Chair
Dr. Lawrence S. Feldman, Vice Chair
Dr. Dorothy Bendross-Mindingall
Ms. Susie V. Castillo
Mr. Carlos L. Curbelo
Dr. Wilbert "Tee" Holloway
Dr. Martin Karp
Dr. Marta Pérez
Ms. Raquel A. Regalado

Mr. Alberto M. Carvalho
Superintendent of Schools

Mr. Jose F. Montes de Oca, CPA
Chief Auditor
Office of Management and Compliance Audits

Contributors To This Audit:

Directed by:

Mr. Julio C. Miranda, CPA, CFE

Supervised by:

Mr. Jon Goodman, CPA, CFE

Additional Contributors:

Mr. Luis O. Baluja, CISA
Ms. Maria A. Curbelo, CFE
Ms. Jeanette M. Polynice

Reviewed by:

Mr. Trevor L. Williams, CPA





Miami-Dade County Public Schools

giving our students the world

Superintendent of Schools
Alberto M. Carvalho

Chief Auditor
José F. Montes de Oca, CPA

Miami-Dade County School Board

Perla Tabares Hantman, Chair
Dr. Lawrence S. Feldman, Vice Chair
Dr. Dorothy Bendross-Mindingall
Susie V. Castillo
Carlos L. Curbelo
Dr. Wilbert "Tee" Holloway
Dr. Martin Karp
Dr. Marta Pérez
Raquel A. Regalado

November 22, 2013

The Honorable Chair and Members of The School Board of Miami-Dade County, Florida
Members of the School Board Audit and Budget Advisory Committee
Mr. Alberto M. Carvalho, Superintendent of Schools

**Subject: **Audit of Questioned Financial Transactions of
Doral Academy Charter High School (the High School)****

We performed the subject audit as approved by the Audit and Budget Advisory Committee (ABAC) and the School Board at their meetings of January 29 and February 13, 2013, respectively. The audit was performed, reviewed, and this report prepared, by my staff and me in compliance with Government Auditing Standards, issued by the Comptroller General of the United States.

Our audits of charter schools and related work efforts are conducted to determine the extent to which the assets of the school system (which the charter schools are a part of) are accounted for and safeguarded from loss. Also, it is our responsibility to assist the School Board of Miami-Dade County in its statutory duties to oversee the use of public tax dollars by the charter schools it sponsors. This audit needed to be performed based on our identification of two financial transactions we questioned during our annual review of the High School's June 30, 2012, financial statements.

With respect to the first financial transaction, while we could not determine with certitude its authority or legality, our audit did definitively conclude that the "recoverable grant" of K-12 education tax dollars to Doral College, Inc. was executed on the last day of the fiscal year without the approval of the High School's own Governing Board. The grant lacked transparency and provided no contractual assurance of benefit to the High School. Doral College is a "private," "independent," unaccredited, institution of higher learning "not subject to the Florida Public Records law."

Concerning the second transaction, we concluded that the Governing Board of the High School approved a lease agreement (with an early termination provision in favor of the landlord) and entered into construction contracts, which together, contractually subjected the High School to the risk of losing substantial capital investment of publicly derived funds to its landlord. The landlord, School Development LLC, is owned by the same individuals who own the High School's management company.

Net capital assets subjected to the risk of loss ranged from \$913,533 in 2009 to \$5,446,968 as of June 30, 2012.

Subsequent to the completion of our audit fieldwork, on October 18, 2013, the same day we provided a draft of our report to the School for its response, Doral Academy, Inc. provided us a lease amendment executed on August 27, 2013, eliminating the early termination provision from the subject lease agreement between School Development LLC and Doral Academy High School, Inc.

The Executive Summary begins on page 1, and the detailed findings and recommendations begin on page 10. Appendices A and F contain letters from the law firm, which we retained, to assist us in reviewing certain complex business arrangements and real estate transactions.

Appendix E provides the responses by the School, through its attorney. Because the responses provided by the auditee are mostly a smoke screen designed to deflect the attention of the reader away from the important issues uncovered by the audit, we have provided certain evaluation and commentary to those responses to emphasize the salient points. Such auditor evaluation and commentary is prescribed by Sections 7.35 and 7.37, Government Auditing Standards (2011 Revision).

Also in accordance with Government Auditing Standards, and chapter 9 of the Office of Management and Compliance Audits' Policies and Procedures Manual, we have provided a copy of the final audit report to the Office of the Inspector General for their independent evaluation.

Sincerely,

A handwritten signature in black ink, reading "José F. Montes de Oca". The signature is written in a cursive style with a large, sweeping initial "J".

José F. Montes de Oca, Chief Auditor
Office of Management and Compliance Audits

TABLE OF CONTENTS

EXECUTIVE SUMMARY	1
BACKGROUND & CONTEXT	3
ENTITY RELATIONSHIPS	9
FINDINGS & RECOMMENDATIONS	10
1. THE SCHOOL'S \$400,000 GRANT OF K-12 EDUCATION TAX DOLLARS TO AN INDEPENDENT COLLEGE, OCCURRED WITHOUT GOVERNING BOARD APPROVAL AND LACKED TRANSPARENCY	10
2. THE CHARTER SCHOOL GOVERNING BOARD'S APPROVAL AND EXECUTION OF CONSTRUCTION CONTRACTS (AND RELATED TRANSACTIONS) APPROXIMATING \$4.5 MILLION FOR ADDITIONS AND IMPROVEMENTS TO ITS LEASED FACILITIES, SUBJECTED THE HIGH SCHOOL TO THE RISK OF LOSING SUCH INVESTMENT TO THE LANDLORD	14
APPENDICES	
A - SHUTTS & BOWEN LETTER	19
B - RECOVERABLE GRANT AGREEMENT	26
C - LETTER TO OMCA FROM THE CHAIR OF DORAL COLLEGE, INC.	31
D - RESPONSE FROM MS. TIFFANIE PAULINE, ASSISTANT SUPERINTENDENT OF THE OFFICE OF CHARTER SCHOOL SUPPORT	32
E - DORAL ACADEMY CHARTER HIGH SCHOOL'S RESPONSE TO OMCA DRAFT AUDIT REPORT DATED OCTOBER 18, 2013	33
F - SHUTTS & BOWEN REPLY	68

EXECUTIVE SUMMARY

The conduct of this audit was approved by the Audit and Budget Advisory Committee (ABAC or the Committee) at its January 29, 2013 meeting, and by the School Board at its February 13, 2013 meeting. Contractual authority is found in the “right to audit clause” in Section 4. Paragraph F.7 of the charter agreement between The School Board of Miami-Dade County, FL and Doral Academy, Inc. on behalf of Doral Academy High School. Section 1002.33, Florida Statutes, delineates the School Board’s responsibilities as the sponsor to oversee and support its charter schools, including to “monitor the revenues and expenditures” of its charter schools.

In our professional view, this audit needed to be performed based on two financial transactions by Doral Academy Charter High School, that we found to need further review, identified during our annual review of the School’s June 30, 2012, audited financial statements. The two transactions identified are:

1. a \$400,000 outlay of funds to Doral College, Inc. (a private institution of higher learning, independent of Doral Academy Charter High School) expensed on June 30, 2012, and
2. \$4.5 million in capital expenditures for additions and improvements to the School’s leased facilities, which are owned by the same individuals who own Academica, the School’s management company.

As of June 30, 2012, Doral Academy Charter High School was one of five charter schools under the not-for-profit legal entity Doral Academy, Inc. The other four schools under said legal entity are Doral Academy Charter Middle, Doral Performing Arts and Entertainment Academy, Doral Academy of Technology and Doral Academy. According to their audited financial statements, combined annual revenue for the five schools in FY 2011-12 was \$24.9 million, with \$22.3 million deriving from public tax collections.

We determined that the \$400,000 grant to Doral College, Inc. occurring on June 30, 2012, represented a material and unique expense to the High School, and comprised substantially all of the College’s FY 2011-12 revenues. Despite this, Governing Board meeting minutes and other documentation presented and/or obtained demonstrate that the “recoverable grant” was not approved or even considered by the High School’s Governing Board, in a publicly noticed meeting, as of the time of its execution on June 30, 2012. In fact, such consideration and approval by the Governing Board did not take place until November 5, 2012, four months after the fact, and after our office questioned the transaction in written inquiries. In this regard, the \$400,000 “recoverable grant” transaction occurred without Governing Board approval and lacked transparency. Also, we were not provided any documentation as to what contractual assurances the

High School had that it would receive any benefit from its payment of publicly derived funds to the “independent” Doral College, Inc.

Regarding the second questioned transaction, we found that Section 3.5 of the Lease Agreement allows the Landlord to terminate the lease early, subjecting the High School to losing to the Landlord any capital investments for additions and improvements to its leased facilities. This exposure to loss applies to construction contracts (totaling approximately \$4.5 million) which were approved by the High School’s Governing Board in March 2009 and December 2010. Although a letter was delivered to the School dated July 3, 2012, which presumably attempts to correct the Tenant’s exposure to loss, that letter appears to contain significant flaws and may not be legally enforceable.

BACKGROUND AND CONTEXT

Audit Authority

The conduct of this audit was approved by the Audit and Budget Advisory Committee (ABAC or the Committee) at its January 29, 2013 meeting, and by the School Board at its February 13, 2013 meeting. Contractual authority is found in the “right to audit clause” in Section 4. Paragraph F.7 of the charter agreement between The School Board of Miami-Dade County, FL and Doral Academy, Inc. on behalf of Doral Academy High School. Section 1002.33, Florida Statutes, delineates the School Board’s responsibilities as the sponsor to oversee and support its charter schools, including to “monitor the revenues and expenditures” of its charter schools.

This audit seeks to assist the School Board of Miami-Dade County, in its statutory requirements of oversight and support, to improve and maintain the integrity of the control structure, and to ensure accountability, transparency, and efficiency in the expenditures of public tax dollars allocated by the State to District sponsored charter schools.

Identification of Two Financial Transactions Needing Further Review

In our professional view, this audit needed to be performed based on our identification of two financial transactions by Doral Academy Charter High School during our annual review of the School’s June 30, 2012, audited financial statements, that we found to need further review. The two transactions identified were:

- 1) a \$400,000 outlay of funds to Doral College, Inc., a private institution of higher learning “independent of Doral Academy Charter High School,” and “not subject to Florida Public Records law.” The monies were expensed as a “recoverable grant” on June 30, 2012, the last day of the fiscal year.
- 2) \$4.5 million in capital expenditures for additions and improvements to the School’s leased facilities, which are owned by the same individuals who own Academica, the School’s management company.

At the January 29, 2013, ABAC meeting, the Committee unanimously approved the conduct of this audit over protests from various representatives of the School and its management. Also at that meeting, representatives of the School’s Governing Board and management requested, and we agreed, to defer the start of the audit until April 2013, after the completion of the 2012-13 Florida Comprehensive Assessment Test (FCAT).

Objectives, Scope and Methodology

The objective of the audit was to determine whether the two aforementioned transactions were: proper; transparent; in the best interest of the charter school, students, parents/guardians and the community at large; in accordance with applicable laws, rules, and regulations; and whether the control structure over the use of publicly derived funds is adequate. We also endeavored to make value added observations and recommendations for consideration by Miami-Dade County Public Schools, Doral Academy, Inc., and other stakeholders and policy makers.

Audit procedures included:

- Reviewing applicable statutes, laws, policies, procedures and best practices,
- Reviewing various contracts and agreements, including the charter agreements, management contracts, lease agreements, The American Institute of Architects (AIA) construction documents and a grant agreement,
- Reviewing minutes of charter school governing board meetings and audited financial statements,
- Requesting information from various entities including Doral Academy Charter High School, Doral College, Inc., Academica and the School's Certified Public Accountants,
- Requesting interviews with numerous governing board members, staff, and a principal of Doral Academy Charter High School, Doral College, Inc., and Academica (we requested to meet and interview eight individuals, and none of the eight agreed to meet with us),
- Consulting with legal counsel,
- Accessing public records, including financial disclosure forms, Secretary of State records, property tax records, and other data found online,
- Filing of public information requests,
- Researching GAAP (Generally Accepted Accounting Principles) and certain GASB (Government Accounting Standards Board) standards and pronouncements,
- Researching best practices for grants,
- Researching state and national school performance indicators,
- Compiling financial and non-financial data about District sponsored charter schools,
- Tracing the flow of funds and transactions between various entities,
- Retaining the firm Shutts and Bowen, LLP to review and provide advice on certain transactions, and
- Performing analytical procedures.

We conducted this performance audit in accordance with generally accepted Government Auditing Standards issued by the Comptroller General of the United States of America. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Charter Schools

Charter schools have become a substantial component of K-12 public education in Florida and Miami-Dade County. For the year ended June 30, 2012, approximately \$300 million flowed to 108 charter schools operating in Miami-Dade County under the School Board's sponsorship.

Like traditional public schools, charter schools are funded with local, state and federal tax dollars. The funding is largely derived from the Florida Education Finance Program (FEFP) in which the magnitude of funding is determined by weighted full-time equivalent (FTE) / enrollment in the school during date-certain survey periods in October and February. Those public funds to operate the charter schools are distributed to the schools throughout the school year by the sponsoring school district.

Charter schools in Florida are required to be organized as, or be operated by, a non-profit organization. The schools typically have a tax exempt status under Section 501(c)3 of the Internal Revenue Code and their facilities are exempt from ad valorem taxes pursuant to Section 196.1983, Florida Statutes.

Doral Academy Charter High School (Corporate Structure and Governance) (Please see chart on page 9.)

As of June 30, 2012, Doral Academy Charter High School was one of five charter schools under the not-for-profit legal entity Doral Academy, Inc. The other four schools under said legal entity are Doral Academy Charter Middle, Doral Performing Arts and Entertainment Academy, Doral Academy of Technology and Doral Academy. According to their audited financial statements, combined annual revenue for the five schools in FY 2011-12 was \$24.9 million, with \$22.3 million deriving from public tax collections.

Section 1002.33(9)(i), Florida Statutes, states, "The governing body of the charter school shall exercise continuing oversight over charter school operations." The Charter Agreement states, "The school's governing board will be held accountable to its

students, parents/guardians, and the community at large through a continuous cycle of planning, evaluation, and reporting as required by law.”

The selection and composition of charter school governing boards in the State of Florida overall has been a recurring worry for us in our audit and fiscal oversight functions as to governing boards’ independence (or lack thereof) from their management companies and affiliated entities. Such concerns, as evidenced in previous audit or investigative reports issued by our office, also extend to multiple current and recent members of Doral Academy, Inc. (Also, please see the attached letter from Shutts and Bowen, LLP - Appendix A, section 1, which discusses “Lack of Complete Independence” among subject entities).

The Governing Board of Doral Academy, Inc. as of June 30, 2012, comprised:

- Ms. Angela Ramos, President and Chair
- Mr. Luis Fuste, Vice Chair and Treasurer
- Mr. Rene Roviroso, Secretary
- Mr. Manny Cid, Member
- Ms. Kim Guilarte, Member

Mr. Victor Barroso served as Chair of the Governing Board through 2009, and is now employed by Academica as the Director of Operations. As Chair of Doral Academy Charter High School, he supported and executed at least two substantial transactions, discussed later in this report, which appear to have subjected the School to the risk of losing substantial capital investment to the Landlord. We made numerous attempts to contact Mr. Barroso, by email and telephone, but received no responses. As such, we could not ascertain certain data such as the terms and commencement of his employment with Academica.

Mr. Fuste, a practicing attorney in Miami, also serves as Chair of the Board of Trustees of Doral College, Inc., a private institution of higher learning operated by Doral College, Inc. a non-profit 501(c)(3) organization. The College is “independent of Doral Academy Charter High School” and “not subject to Florida Public Records law,” but it was funded 100% by Doral Academy Charter High School with publicly derived tax dollars in FY2011-12.¹

Mr. Roviroso and Ms. Guilarte have both also served for years in management capacities at multiple Academica managed charter schools. Mr. Roviroso is currently the Principal of Mater Academy Lakes Charter High School, and Ms. Guilarte is currently the Principal of Somerset Academy Elementary School (South Miami Campus). Academica’s management contract with schools under its management,

¹ Based on the June 30, 2012 audited financial statements of Doral College, Inc.

including the Mater and Somerset schools, gives it a pivotal role in selecting its schools' principals and reads: "(Academica) will identify and propose for employment by or on behalf of (School) qualified principals, teachers, paraprofessionals, administrators and other staff members and education professionals for positions in the Schools."

As part of our audit procedures, we requested to meet with and interview the School's five Governing Board members. However, through their attorney, they declined our requests to meet for in-person interviews.

Mr. Douglas Rodriguez serves as Principal of Doral Academy Charter High School, Doral Academy Charter Middle and Doral Performing Arts and Entertainment Academy. He concurrently serves as the Chief Operating Officer of Doral College and as a consultant to Somerset Academy, Inc., both organizations managed by Academica.

All five Doral Academy schools received an A grade under the State of Florida's Academic Accountability system for the 2011-12 school year. Furthermore, the 2013 edition of "Best High Schools in America" by U.S. News and World Report Magazine ranks Doral Academy Charter High School 35th of 777 public high schools in Florida, and 591st of 21,035 nationally, based on various criteria including State proficiency test scores and college readiness.

Doral Academy Charter High School's revenues, expenses and net asset position for FY 2011-12 were \$8,559,073; \$8,681,966; and \$4,837,629, respectively, and its total fund balance as of June 30, 2012, was \$1,652,552. The High School had approximately 1,200 students enrolled during the 2011-12 school year.

Doral College, Inc. (Please see chart on page 9.)

Doral Academy Charter High School was under the legal entity Doral College, Inc. until July 1, 2011, when it was transferred to Doral Academy, Inc. and the College became "a private institution of higher learning operated by Doral College, Inc., a non-profit 501(c)(3) organization, independent of Doral Academy Charter High School." Doral College's first courses began in January 2012, and it serves predominately students from Doral Academy Charter High School. The Chair of the College's seven member Board of Trustees is Mr. Luis Fuste, who is also the Vice Chair and Treasurer of Doral Academy, Inc. Mr. Antonio Roca, an attorney and the salaried President of Mater Academy, Inc. also serves on the College's Board of Trustees, as does Ms. Andreina Figueroa, a lobbyist who is also the Governing Board Chair of Somerset Academy, Inc. In apparently the summer of 2011, State Senator, Ms. Anitere Flores, was hired as the President of Doral College, Inc.

Academica Corporation (Please see chart on page 9.)

The Doral charter schools and Doral College are managed by Academica Corporation, a for-profit charter school management company whose officers² as of June 30, 2012 were:

- Mr. Fernando Zulueta, President
- Ms. Magdalena Fresen, Vice President / Treasurer
- Mr. Ignacio Zulueta, Vice President
- Ms. Collette Papa, Secretary

In addition to the five Doral schools, Academica contractually manages 49 other charter schools in Miami-Dade County, including those schools under Mater Academy, Inc., Pinecrest Academy, Inc., and Somerset Academy, Inc. Management fees flowing to Academica for FY 2011-12 from the total of 54 charter schools managed in Miami-Dade were \$9.5 million, including \$1.6 million for the five Doral schools.

School Development, LLC and School Development II, LLC (Please see chart on page 9.)

School Development, LLC and School Development II, LLC, the landlord corporations that own the facilities which house Doral Academy Charter High School, Doral Academy Charter Middle, Doral Performing Arts and Entertainment Academy, Doral Academy of Technology and Doral College, are owned by the stockholders of Academica. Annual rent paid to the two landlord entities by Doral Academy Charter High School and Doral Academy Charter Middle School approximated \$3 million in FY 2011-12. We requested the specific ownership detail of the two landlord corporations from Mr. Fernando Zulueta and Academica. They referred us to their attorneys, who declined to respond to our multiple requests to provide the specific ownership detail.

² Based on note 4 of the June 30, 2012, audited financial statements of Doral Academy High School.

Public / Taxpayers



School Board of Miami-Dade County, FL (Sponsor)

Fiscal oversight per 1002.33 FL Statutes, including "monitor the revenues and expenditures of the charter school"



\$22.3 Million Tax Dollars for FY 2011-12



Doral Academy, Inc. (Legal Entity)

Doral Academy High School
Doral Academy Middle
Doral Performing Arts & Entertainment Academy

- Doral Academy
 - Doral Academy of Technology

Governing Board Members:

- Douglas Rodriguez, Principal**
- Angela Ramos, President and Chair**
- Manny Cid, Board Member**
- Kim Guilarte, Principal Somerset Academy ES (S. Miami Campus) Previously Principal of Mater Academy**
- Rene Rovirosa, Principal Mater Academy Lakes HS**
- Luis Fuste, Vice Chair (also Chair of Doral College, Inc. Board of Trustees)**

Questioned / Audited Transactions

- \$400K "Recoverable Grant" △ 1
- \$4.5M Additions/ Improvements △ 2

Entity Relationships (as of June 30, 2012)

Civica, LLC
 Contracted as architect/ construction manager by Doral Academy Inc. and other Academica-managed schools.



Doral HS Facilities
 11100 NW 27 St.
 Doral, FL 33172

School Development, LLC & School Development II, LLC
 Landlords of High & Middle School Facilities
 FY 11-12 Rental Income: \$3M
 Owned by Stockholders of Academica



Other Miami-Dade Charter Schools managed by Academica :

Mater Academy, Inc.:	18
Pinecrest Academy, Inc.:	7
Somerset Academy, Inc.:	15
Other:	9
Total schools =	49



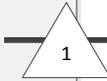
Victor Barroso
 (former Chair of Doral Academy HS Governing Board through 2009)
 Current Director of Operations, Academica

Academica Corporation / Academica Dade, LLC.

Fernando Zulueta, President
 Magdalena Fresen, Vice President / Treasurer
 Ignacio Zulueta, Vice President
 Collette Papa, Secretary

Contracts to manage 54 charter schools in Miami-Dade County

FY11-12 mgmt. fees = \$9.5M, including \$1.6M for 5 Doral schools / also manages Doral College, Inc.
 Key functions/duties: personnel/ employment, facilities identification, design and development, financial management



Doral College, Inc.
 Luis Fuste, Chair Board of Trustees

7 board members, including Antonio Roca, salaried President of Mater Academy, Inc. and Andreina Figueroa, Chair of Somerset Academy, Inc.

- Anitere Flores, President (also District 37 FL Senate)

FINDINGS AND RECOMMENDATIONS

Finding Number 1 (The School's \$400,000 Grant of K-12 Education Tax Dollars To An Independent College, Occurred Without Governing Board Approval And Lacked Transparency.)

On June 30, 2012, the last day of Doral Academy Charter High School's fiscal year, a \$400,000 outlay of funds was expensed as a "recoverable grant" to the benefit of Doral College.³ The College is a private institution of higher learning operated by Doral College, Inc., a non-profit 501(c)(3) organization "independent of Doral Academy Charter High School" and "not subject to Florida Public Records law." The stated purpose of the grant was to fund Doral College which is developing a comprehensive college dual enrollment program for the benefit of the Grantor's students.

Doral College is unaccredited and not eligible to participate in the State's Dual Enrollment Program under Section 1007.271, Florida Statutes. This issue was addressed in January 2012, when Doral Academy Charter High School requested that Miami-Dade County Public Schools (M-DCPS) create and activate course codes for dual enrollment courses through Doral College. M-DCPS responded on January 19, 2012, that: "After consultation with ... the Florida Department of Education, it has been determined that because Doral College has not been accredited by SACS or ACICS, it is not eligible to participate in the dual enrollment program."

We were not provided any documentation as to what contractual assurances the High School had that it would receive any benefit from its payment of publicly derived funds to the "independent" Doral College, Inc. The authority and legality of said expense is also not clear to us.

The "recoverable grant agreement" was executed with Ms. Angela Ramos signing on behalf of Doral Academy Charter High School, and Mr. Luis Fuste⁴ signing on behalf of Doral College. (Please see Appendix B, page 26.) The grant was executed without having basic and standard elements of a grant of publicly derived funds, including the

³ The \$400,000 transaction originated as a loan in FY2010-11, when the \$400,000 was initially disbursed as a loan from Doral Academy High School to Doral College. At that time, the High School and the College were separate accounting entities, but both were under the same legal entity. On June 30, 2012, after the High School and College had also become separate legal entities, the High School's Board Chair approved and signed the "recoverable grant agreement" which served to forgive the \$400,000 loan due from the College. This essentially converted the loan to a grant, and the loan receivable was reclassified as an expense to the High School on June 30, 2012. It should also be noted, that we requested from the High School, but were not provided, documentation evidencing the original loan and its terms and conditions.

⁴ Chair of Doral College Inc.'s Board of Trustees and Vice Chair and Treasurer of Doral Academy, Inc.

lack of a grant application/proposal, detailed grant budget, project deliverables with due dates, and performance accountability measures.

For the year ended June 30, 2012, with the inclusion of the grant revenues from the June 30, 2012 grant from Doral Academy Charter High School, the College's operating surplus and net asset position were \$151,470 and \$120,135, respectively. Without receipt of the \$400,000 grant revenues from the High School on June 30, 2012, the College would have had an operating deficit and deficit net asset position of \$(248,530) and \$(279,865), respectively, as of the year end.⁵

The \$400,000 grant to Doral College, Inc. occurring on June 30, 2012, represented a material and unique expense to the High School, and comprised substantially all of the College's FY 2011-12 revenues. Despite this, Governing Board meeting minutes and other documentation presented and/or obtained demonstrate that the "recoverable grant" was not approved or even considered by the High School's Governing Board, in a publicly noticed meeting, as of the time of its execution on June 30, 2012. In fact, such consideration and approval by the Governing Board did not take place until November 5, 2012, four months after the fact, and after our office questioned the transaction in written inquiries. In this regard, the \$400,000 "recoverable grant" transaction occurred without Governing Board approval and lacked transparency.

Absent adherence to appropriate controls and transparency, there is an increased risk that the High School's expenditures and expenses of publicly derived funds will be used for purposes other than those intended.

As part of our audit procedures, we requested certain documentation from the College, such as employment contracts and payroll/salary registers. In response, we received a letter from the Chair of Doral College, dated May 22, 2013, stating: "Doral College is a private institution of higher learning operated by Doral College, Inc., a non-profit 501(c)(3) organization, independent of Doral Academy Charter High School. Doral College is not subject to Florida Public Records law, see AGO 07-27, FLA. STAT. ch, 119, 206. Doral College is prepared to assist you by providing documentation consistent with its obligations under state and federal law." (Please see Appendix C, page 31.)

In that we were unable to obtain the aforementioned documentation from the College, we requested in writing and via telephone to meet with and interview members of the

⁵ The College's financial position has a bearing on its accreditation process through the Southern Association of Colleges and Schools.

College's administration and Board. However, we did not receive any responses to our requests.

Recommendation

1. Doral Academy Charter High School should:
 - a. Implement and adhere to internal financial controls that will ensure that unique and substantial expense of publicly derived funds, such as the \$400,000 "recoverable grant" of June 30, 2012, will be properly considered and approved at a publicly noticed meeting and in a transparent manner by the School's Governing Board, prior to execution. The Board should consider the expense's authority and legality, as well as contracted benefit and value to the School and its stakeholders.

Doral Academy, Inc.'s Response:

- The draft Report makes no mention of the fact that the internal loan, and subsequently, the grant, were *both* reflected in numerous budgets that the governing board approved at *every* meeting in 2011 through 2012. Instead, the draft Report says the grant was "not approved or even considered" by the governing board in a publicly noticed meeting until November 5, 2012, after the audit group "questioned" the grant and therefore constituted an internal control deficiency. Report at 11. This is simply wrong. As reflected in the minutes for the publicly noticed August 2, 2012 board meeting, which Doral provided to OMCA, the board *did* approve a revised 2011-2012 budget reflecting the conversion (i.e., reallocation) of the \$400,000 to a grant. When the budget was submitted to the board for approval, a discussion took place about the entire school budget, *including the \$400,000*.
- In sum, there were *no* internal control or transparency deficiencies with respect to this transaction. As written, this section of the Report does not paint an accurate picture of the transaction, ignores the key information described above, and mischaracterizes a praiseworthy initiative.

OMCA's Comments:

- The first time the term "recoverable grant" is even mentioned in the Governing Board meeting minutes is November 5, 2012, four months after the grant was executed. Minutes provided for the August 2, 2012 Board

meeting (which itself occurred one month after the execution of the grant on June 30, 2012) also have no mention of the words “recoverable grant” or “grant” in the minutes or attachment. The attached, after-the-fact, undated, revised 2011-12 budget reflects only a \$400,000 “Professional / Technical Services (loan reallocation).” The execution of the “recoverable grant” on June 30, 2012 was certainly not transparent.

- b. Ensure publicly derived funds granted to distinct entities are authorized, legal, and incorporate basic and standard elements of a grant, including a grant application/proposal, detailed grant budget, project deliverables with due dates, and performance accountability measures.

Doral Academy, Inc.’s Response:

- OMCA turns to amorphous and unidentified principles regarding the “basic and standard elements of a grant of publicly derived funds, including the lack of a grant application/proposal, detailed grant budget, project deliverables with due dates, and performance accountability measures.” There is no citation to any authority for these standards, and this part of the Report misunderstands the nature of the audited transaction. This was not a situation where numerous entities were competing for a grant from a third party. In any event, the school is happy to implement these suggestions, but the Report must make clear that they are voluntary and nonessential.

OMCA’s Comments:

- As an example, the Florida Department of Education’s Green Book (Project Application and Amendment Procedures for Federal and State Programs) identifies and defines the elements stated in our report (i.e. application, budget, deliverable and performance measures) GREEN BOOK at Glossary 2, 5, and 11.

Finding Number 2 (The Charter School Governing Board's Approval and Execution of Construction Contracts (and Related Transactions) Approximating \$4.5 Million For Additions and Improvements To Its Leased Facilities, Subjected The High School To The Risk of Losing Such Investment To The Landlord.)

On February 9, 2009, a contract was entered into in the amount of \$551,401, between the legal entity of Doral Academy Charter High School and a general contractor for improvements to the Doral Middle-High Cafeteria. It was signed by Mr. Victor Barroso⁶ as the Charter School's Board Chair and approved/ratified by the School's Governing Board at its March 3, 2009 meeting. A second contract, between the same entities, was entered into on November 18, 2010, for the Doral Classroom Wing Addition, in the amount of \$3,980,593. It was signed by the School's new Board Chair and President, Ms. Angela Ramos, and approved/ratified by the School's Governing Board at its December 2, 2010 meeting.

The property and facilities added to and improved with the total \$4.5 million in publicly derived School funds, located at 11100 NW 27th Street, Miami, FL, was and is owned by School Development, LLC, which leases the facilities to the School.

School Development, LLC is owned by the stockholders of Academica, the School's management company. School Development II, LLC, the landlord leasing the attached facilities to Doral Academy Charter Middle School, is also owned by the stockholders of Academica.⁷ Annual rent paid to the two landlord entities by Doral Academy Charter High School and Doral Academy Charter Middle School was approximately \$3 million in FY 2011-12.

The lease between the School's legal entity and landlord, School Development, LLC, had been initially entered into for a 20-year term on April 1, 2004. It was executed with Mr. Ignacio Zulueta signing on behalf of the landlord, School Development, LLC, and Messrs.' Victor Barroso and Fernando Zulueta signing on behalf of the tenant, Doral Academy High School, Inc. As of June 30, 2012, there were 12 years remaining on the lease term. Section 3.5 of the lease, an early termination clause in favor of the landlord, was in effect, as was a five year renewal option in favor of the School as tenant.

⁶ Mr. Victor Barroso served as Chair of the Governing Board of Doral Academy Charter High School through 2009, and is now employed by Academica as the Director of Operations.

⁷ We requested the specific ownership detail of the two landlord corporations from Mr. Fernando Zulueta and Academica. They referred us to their attorneys, who declined to respond to our multiple requests to provide the specific ownership detail.

As of June 30, 2009, \$913,533 in publicly derived tax dollars appeared on the financial statements of Doral Academy Charter High School as net capital assets from additions and improvements the School made to its leased facilities. Net capital assets of the High School from additions and improvements grew in the following years as follows: \$1,452,357 at June 30, 2010; \$4,246,123 at June 30, 2011; and \$5,446,968 at June 30, 2012.

We retained the law firm Shutts and Bowen, LLP, to review the aforementioned contracts, lease agreements, related financing documents of the landlords and tenants, and other documentation associated with the subject real estate transactions and arrangements. Their primary conclusion most relevant to our audit objectives can be summarized as follows:

- Section 3.5 of the Lease Agreement allows the Landlord to terminate the lease early, subjecting the High School to losing to the Landlord any capital investments for additions and improvements to its leased facilities. This exposure to loss applies to the aforementioned construction contracts (totaling approximately \$4.5 million) which were approved by the High School's Governing Board in March 2009 and December 2010. Although a letter was delivered to the School dated July 3, 2012, which presumably attempts to correct the Tenant's exposure to loss, that letter appears to contain significant flaws and may not be legally enforceable. An excerpt from Shutts and Bowen's review is found below. (Please see Appendix A for the letter from Shutts and Bowen in its entirety.)

"It is highly unusual to see an early termination provision which allows the Landlord the right of early termination without payment of substantial funds to Tenant to reimburse Tenant for major capital improvements. To illustrate the danger of this provision, note that the Landlord could utilize this early termination right anytime it wants to do so, including, but not limited to, the day immediately after the Tenant incurs the full \$5,000,000.00 of debt and completes its construction of the additional 36-57,000 square feet of improvements. At termination, under the Lease all improvements would become the property of the Landlord free and clear (i.e., a complete windfall) and Tenant (not Landlord) would remain liable for the \$5,000,000.00 debt."

Recommendation

2. Doral Academy Charter High School's Governing Board should:
 - a. Fulfill its obligations to the School's students, parents/guardians, and the community at large, by ensuring individual Board members and the Board collectively have a sufficient understanding of major and complex transactions and business arrangements, such as the \$4.5 million in additions and

improvements to its leased facilities, prior to approving and executing related contracts and expenditures.

Doral Academy, Inc.'s Response:

- The Landlord executed a waiver of early termination on August 27, 2013, rendering the entire issue moot. See DORAL000244. If OMCA would like to suggest any alternative, specific language, we are confident that the Landlord would be more than happy to adopt it. Respectfully, however, these are immaterial issues that “do not warrant becoming reportable audit findings.” OMCA MANUAL at 58.
- Recommendation 2(a) states that the school should ensure the board has a sufficient understanding of these types of “major and complex transactions.” This recommendation is out of place; the board’s understanding of the second transaction is beyond dispute, as the board approved and ratified the transaction at its December 2, 2010 meeting.

OMCA's Comments:

- OMCA certainly does not agree with the school and its attorney’s assertion that the facts surrounding the early termination provision are “immaterial issues.” The School was contractually subjected to the risk of losing capital investment of publically derived funds to its landlord, ranging from \$913,533 in 2009 to \$5,446,968 as of June 30, 2012. At a minimum, this demonstrates that the Doral Academy Charter High School’s Governing Board members did not understand the transactions and arrangements which they approved.
- b. Coordinate with the School’s Landlord to re-draft and re-execute the July 3, 2012 letter/lease amendment to ensure it is legally enforceable, and protects the School against loss of its capital improvements. Also, to the extent that the Middle School, or other charter schools under Doral Academy, Inc. have net capital assets for improvements to their leased facilities, amend those leases accordingly to protect those schools against potential loss of capital improvements.

Doral Academy, Inc.'s Response:

- Recommendation 2(b) suggests (i) that the Landlord re-draft and re-execute July 3, 2012 letter/lease agreement, and (ii) amend any similar leases by Doral Middle School or Doral Academy charter schools. The first suggestion is moot and therefore should be

removed. The second suggestion is outside the scope of the audit but not objectionable.

Recommendation to Governing Board of Doral Academy, Inc.

3. As noted on pages five through seven of this report under the section Doral Academy Charter High School (Corporate Structure and Governance), and as discussed in the Shutts and Bowen letter (Appendix A), consider a “firming up” of the independence factors to preserve sound, candid oversight and proper checks and balances which exist in businesses of comparable size to Doral Academy, Inc. Also, consider disallowing charter school board members or employees from working for a vendor within a period of time of leaving their position with the charter school.

Doral Academy, Inc.’s Response:

- Recommendation 3 is inaccurate and irrelevant. As set forth in the discussion regarding pages 6-9, there is nothing to show any “lack of independence” or checks and balances. Doral’s board is completely independent from its vendors and its composition is consistent with all applicable authorities. This recommendation is the result of pure speculation.

OMCA’s Comments:

- The recommendation addresses our concern that two Governing Board members (Mr. Rene Roviroso and Ms. Kim Guilarte) are long-time principals of other Academica managed schools (for which “management” includes identifying and proposing employment of principals), and Doral Academy, Inc.’s Vice-Chair and Treasurer (Mr. Luis Fuste) concurrently serves as the Chair of Doral College, Inc. Additionally, the recommendation addresses our concern that Ms. Victor Barroso, who as Chair of Doral’s Board supported and executed at least two transactions that we question, became Academica’s Director of Operations shortly after his tenure as Chair.

Recommendation to Office of Charter School Support

4. Consider discussing with and/or proposing to policymakers and charter school stakeholders mechanisms to better ensure Charter School Governing Boards are engaged, informed, independent, and accountable to their students, parents/guardians and the community at large. Items to be discussed could include a) how to maintain school-based governance and autonomy while

increasing stakeholder participation and reducing conflicts of interest, b) whether the charter school board should include parents and/or teachers, be appointed or elected and/or have slots for members to be appointed by the authorizer and, c) whether legislation should be proposed that would prohibit individuals from serving on multiple charter school boards or simultaneously as an administrator and Governing Board member of separate charter schools under a common contracted management company.

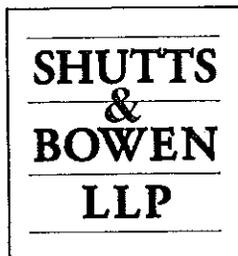
Office of Charter School Support's Response:

- This correspondence is in response to the Office of Management and Compliance Audits' (OMCA) draft audit report, *Audit of Questioned Financial Transactions of Doral Academy Charter High School*. After a thorough review of the report, I accept the OMCA's recommendation to the Office of Charter School Support (CSS) regarding solutions to better ensure charter school governing boards are engaged, informed, independent and accountable to their students, parents/guardians and the community at large. CSS will solicit assistance from the School Board Attorney and the Office of Intergovernmental Affairs, Grants Administration and Community Engagement to work with policymakers and charter school stakeholders to craft legislation and policies for the upcoming legislation session relative to the concerns raised in this report.

Doral Academy, Inc.'s Response:

- This recommendation to the Office of Charter School Support, including proposals for legislative changes, is improper. OMCA should not be a platform for its auditors' political agendas. This recommendation is a vague mish-mash of buzzwords and aspirations that the District *itself* does not follow.

APPENDIX A



Founded 1910

Kevin D. Cowan
Partner
(305) 379-9110 Direct Telephone
(305) 347-7710 Direct Facsimile

E-Mail Address:
kcowan@shutts.com

October 15, 2013

josemontesdeoca@dadeschools.net

Jose F. Montes de Oca
Chief Auditor
Miami-Dade County School Board
Miami, Florida

Re: *Certain Actions, Operations and Transactions of Doral Academy High School, Inc. ("Doral") in connection with Doral Academy High School, 11100 NW 27th Street, Miami, Florida (33172-5001) ("High School") (Doral and the High School are hereinafter collectively referred to as the "Tenant"), including, but not limited to, Amended and Restated Lease and Security Agreement dated April 1, 2004 (the "Lease")*

Ladies and Gentlemen:

You have asked Shutts & Bowen (the "Firm"), acting as special counsel to the Miami-Dade County School Board, (i) to review the items listed on Exhibit "A" attached hereto (collectively, the "Items"), (ii) to advise you of any significant legal terms, practices or procedures we find to be very unusual, and (iii) based upon our general experience as commercial real estate attorneys who have reviewed many transactions, including, but not limited to, transactions involving leases, construction contracts, mortgage loans, business entities and commercial contracts, to advise you of any significant business terms, practices or procedures we find to be very unusual.

Based upon our review of the Items, we find as follows:

1. Lack of Complete Independence.

The Lease and other business arrangements relating to School Development LLC ("Landlord"), Tenant, and Academica Dade LLC ("Academica") involve substantial funds, many employees and fairly complex relationships. In business arrangements of this type, there is usually a great degree of independence among decision makers to ensure that, among other

things, fiduciary responsibilities are honored, checks and balances exist so that errors do not go undetected and overall sound business practices are observed.

In connection with Tenant, there appears to be a lack of complete independence. First, at least one individual who was an elected or appointed officer, director or employee of the Tenant is, or was, an officer, director or employee of Academica, the entity under contract to operate the Tenant. Even if these circumstances were created completely in good faith—and we have no reason to believe otherwise - this creates a possible conflict of interest, an appearance of impropriety and possibly an unsound environment for detection and correction of problems. Second, based upon the materials supplied to us, it seems that all or some of the current shareholders or members which own Landlord and/or Tenant appear to be all or some of the same shareholders or members which own Academica. Again, even if this circumstance was created completely in good faith and - we have no reason to believe otherwise - because of these relationships, the members or shareholders of Landlord and/or Tenant may not be as strict with the operator of the school and/or supervise them to the same degree as they would otherwise; similarly, the shareholders or members of Academica may not be as likely to file reports to the State (as required by the statutes) which are critical of the Landlord and/or Tenant as they would be otherwise. Third, although the relationship between Academica and Academica Charter Schools Finance is unclear, we note that Academica, as operator, advises the Tenant on many matters, possibly including issues relating to whether or not to seek loans. Again, even assuming the very best of motives and intentions, it may be difficult for Academica to provide unbiased, independent insight when advising the Tenant whether it should borrow funds from a possible affiliate. (In addition, based upon the existing management contract it appears that Academica's fees increase per additional student enrolled.)

As a final comment on this lack of independence, you should note that some written notices (e.g., notices of default) go to the Tenant c/o Academica. This notice protocol puts the responsibility on Academica (the notice receiver) to advise the Tenant (i.e., its employer) if someone claims Academica is doing something inappropriate. Certainly it is possible, through pure inadvertence alone, that not all notices find their way into the employer's possession. But this point goes beyond merely reporting about receipt of notices or complaints. In light of the possible overlap of shareholders, members, officers and/or directors, one may question whether every small transgression gets detected, reported and corrected to the same degree as would be the case if all persons were completely independent.

Thus, we would encourage a "firming up" of the independence factors to preserve sound, candid oversight and proper checks and balances which exist in businesses of comparable size. This can be accomplished fairly easily with the requirement of "Independent Directors," full disclosure requirements, preapprovals, rules to prevent relatives and former charter school employees from doing business with the charter school, etc. We will be happy to discuss this with you in further detail.

2. Lease.

The Lease document itself does not appear to be problematic, with one important exception. That exception is Section 3.5, which states:

“In the event Landlord obtains a release of the Premises from the lien of the First Mortgage, Landlord may give written notice to Tenant of the early termination of this Lease.”

It is highly unusual to see an early termination provision which allows the Landlord the right of early termination without payment of substantial funds to Tenant to reimburse Tenant for major capital improvements. To illustrate the danger of this provision, note that the Landlord could utilize this early termination right anytime it wants to do so, including, but not limited to, the day immediately after the Tenant incurs the full \$5,000,000.00 of debt and completes its construction of the additional 36-57,000 square feet of improvements. Upon termination of the Lease, all improvements would become the property of the Landlord free and clear (i.e., a complete windfall) and Tenant (not Landlord) would remain liable for the \$5,000,000.00 debt. (See discussion at paragraph 5 of this letter concerning the signing of the Construction Contracts notwithstanding the danger of this Section 3.5 of the Lease.) Moreover, the mortgage documents provide that the Mortgagee has the right to release premises from the lien of the First Mortgage. Therefore, it is possible that the Landlord, with no ill intent, could pay off a portion of the First Mortgage or substitute other collateral for the high school, effectuate the release of the lien of the First Mortgage from the Tenant's premises, which would, in turn, allow Landlord to exercise its right of Lease termination under Section 3.5 of the Lease. This is a dangerous circumstance for Tenant.

It is true that recently (8 years after Section 3.5 was approved in the Lease), the Landlord delivered a letter (dated July 3, 2012) to Angela Ramos, essentially amending Section 3.5 and agreeing to pay to Doral at “expiration of the Lease” a payment equal to the unamortized cost of the Tenant Improvements. Although these are possibly oversights, we note the following: (i) most lease amendments need to be witnessed and this letter was not witnessed, (ii) the letter refers only to lease “expiration” and not “early termination,” (iii) the letter states that this payment obligation is guaranteed by all of Landlord's members but we do not know whether School Development II, LLC and Wolfson Hutton Company (e.g., the signatories on the letter) constitute all of Landlord's members, and if not, this payment obligation most likely would not be enforceable against any member who did not sign, and (iv) the signatory of the letter is not the same entity as the Landlord. This letter, prepared well after the fact and possibly without the advice of legal counsel, appears to have been done in a hurried fashion, as it does not appear to be in the typical legal form of a lease amendment document or a guaranty agreement document.

3. Bond Issuance/Mortgage Loan securing debt of \$53,780,000.00 and Prior Debt of \$7,470,000.00.

Currently, there exists as an encumbrance on the Tenant premises (as well as on other school premises) an Amended and Restated Mortgage, Security Agreement and

Assignment of Rents and Leases (the "Mortgage") signed by Landlord in favor of Academica Charter Schools Finance, LLC, dated April 1, 2004, as assigned to Zion First National Bank by Assignment dated April 27, 2004 (the "Mortgagee").

Generally speaking, we have no major problems with the documentation concerning this mortgage transaction in and of itself. However, there are two very important structural circumstances which we find to be unusual. First, there exists a "cross collateralization" provision with respect to all five (5) mortgages of Landlord (or companies that appear to be Landlord affiliates). The obvious problem here is that if one school or one mortgagor operates in a way that violates the Mortgage, then the Mortgagee can foreclose and the Lease can be put in default even though Tenant committed no default itself. Second, from the documentation provided to us, it appears that, contrary to what is required under Section 29.2 of the Lease, there exists no separate Nondisturbance Agreement (except under the \$7,470,000.00 loan), which would prevent Mortgagee from foreclosing on Tenant and then, as permitted under applicable law, simply "wiping out" the Lease. In our experience, usually a tenant requires a landlord to cause the lender to provide to it a Nondisturbance Agreement which essentially states that the foreclosing lender will not disturb the tenant so long as the tenant is not in default under its lease.

We would recommend that, even at this late date, the Landlord and Tenant attempt to obtain a Nondisturbance Agreement from Mortgagee. Also, we would recommend that, prior to encumbering school properties with loans, possibly an "independent audit" of the loan transactions should be done in advance as a matter of sound business practice.

4. Building Hope...A Charter School Facilities Fund.

The provisions of the Construction Loan Agreement in the amount of \$5,000,000.00, promissory note in the amount of \$1,800,000.00, promissory note in the amount of \$3,200,000.00, Security Agreement collateralizing the Loan, all of which are dated on or about April 11, 2011, the amendments, certifications and minutes, all appear to be in proper form.

5. Construction Contracts.

There are two (2) construction contracts referenced on Exhibit "A" (the "Construction Contracts"). Although they appear to be done in a fairly simple fashion, they are nevertheless acceptable. However, it is important to note that these Construction Contracts (the 2009 contract for \$551,401.00 being signed by Victor Barroso, as chairman, and the 2010 construction contract for \$3,980,593.00 being signed by Angela Ramos, as President) (i) were entered into with Section 3.5 of the Lease in existence and unmodified by the 2012 letter and (ii) were entered into prior to the signing of the \$5,000,000.00 Building Hope loan which we understand was intended to generate the repayment funds for this \$4,531,994.00 amount of work. Finally, we note, in passing, that the construction contracts do not have a penalty/liquidated damages provision for late delivery as is normally required and that the insurance provisions appear a bit weak and do not include the Miami-Dade School Board as Additional Insured.

However, they do appear to meet the \$1,000,000.00 minimum insurance coverage required by statute.

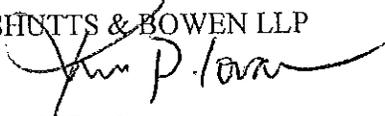
Miscellaneous Observations/Recommendations.

- The appropriate parties should consider an advance approval requirement with respect to larger loans and possibly even prohibit cross collateralizations in the future.
- The Management Agreement provides for “60 day notice of termination to tenants.” This is too long in cases of fraud, deceit or serious threat to persons or property.
- Victor Barroso was chairman of the Governing Board and now is employed by Academica. Similarly, Ignacio Zulueta is a participant of Academica and also the Landlord. The Governing Board should consider implementing steps to assure greater independence. For example, as is customarily seen in corporate bylaws or limited liability operating agreements, the Governing Board should consider requiring advance written consent of any transactions between a charter school and any vendor which is owned or controlled by a relative of the charter school governing board. Similarly, the Governing Board should consider disallowing charter school board members or employees from working for a vendor within a period of time of leaving their position with the charter school.
- Florida Statute Sec. 1002.33 requires generally accepted fiscal management and exercise of continuing independent oversight. The drafters of the statute appeared to be concerned with “related parties” (i.e., relatives).
- The Charter School Agreement, renewed May 12, 2011, requires that no governing board member receive compensation directly or indirectly from the school operators.

Obviously, the above list is not intended to be critical of anyone or any practice in particular, or to present an exhaustive list of possible problems, or to emphasize every item that may have been handled differently by this law firm. Nevertheless, we hope this analysis is helpful to you. Please feel free to call Alex Tachmes or me with any questions or comments.

Very truly yours,

SHUTTS & BOWEN LLP


Kevin D. Cowan

LIST OF ITEMS

EXHIBIT "A"

1. Letter from Eleni C. Pantaridis, Esq. to Benjamin M. Esco dated September 20, 2013
2. Florida Statute Section 1002.33 printed September 19, 2013
3. Email with attached title research ATIDS search from Olga L. Duque to Kevin D. Cowan sent September 16, 2013
4. Clarification to the Security Agreement dated September 17, 2012
5. First Allonge and Modification to Promissory Note dated September 17, 2012
6. Certification dated September 17, 2012
7. First Amendment to Construction Loan Agreement between The Doral Academy, Inc. and Building Hope. . . . A Charter School Facilities Fund dated September 17, 2012
8. Letter from School Development LLC to Angela Ramos, Doral Academy, Inc. dated July 3, 2012
9. Charter School Management Agreement between Doral Academy, Inc. and Academica Dade LLC commencing July 1, 2012
10. Doral Academy High School Financial Statements and Independent Auditors' Reports dated June 30, 2009, June 30, 2010, June 30, 2011 and June 30, 2012
11. Charter School Contract between The School Board of Miami-Dade County, Florida and Doral Academy, Inc. on behalf of Doral Academy High School dated May 12, 2011
12. Security Agreement by Doral College, Inc. and the Doral Academy, Inc. for the benefit of Building Hope. . . . A Charter School Facilities Fund dated April 11, 2011
13. Promissory Note in the amount of \$1,800,000.00 dated April 11, 2011
14. Promissory Note in the amount of \$3,200,000.00 dated April 11, 2011
15. Construction Loan Agreement between Doral Academy College, Inc. and The Doral Academy Inc. dated April 11, 2011
16. Doral Academy, Inc. and Doral College, Inc. Board Resolution dated February 18, 2011
17. Doral Academy, Inc. Governing Board Resolutions dated February 18, 2011

18. Doral Academy, Inc. and Doral College, Inc. Minutes of Special Meeting of the Board of Directors dated February 18, 2011
19. AIA Document A101 Standard Form of Agreement between Doral Academy High, Inc. and Campus Construction Group, Inc. dated February 9, 2009 for the amount of \$551,401.00
20. AIA Document A101 Standard Form of Agreement between Doral Academy High, Inc. and Campus Construction Group, Inc. dated November 18, 2010 for the amount of \$3,980,593.00
21. Doral Academy, Inc. and Doral Academy High School Minutes of Meeting of the Board of Directors dated March 3, 2009
22. Amended and Restated Lease and Security Agreement between School Development LLC and Doral Academy High School, Inc. dated April 1, 2004
23. Articles of Incorporation of The Doral Academy, Inc. filed June 8, 1999

APPENDIX B

RECOVERABLE GRANT AGREEMENT

This Recoverable Grant Agreement (this "Agreement") is entered into as of June 30th, 2012 by and between Doral Academy High School ("Grantor"), a Florida not for profit corporation, and Doral College ("Grantee"), a Florida not for profit corporation.

RECITALS

- A. Grantor is a Florida not for profit corporation dedicated to providing education services, namely, 9th through 12th grade (9-12) classroom instruction and other educational services through charter schools.
- B. Grantee is a Florida not for profit corporation dedicated to providing college level education services.
- C. Grantee is developing a comprehensive college dual enrollment program (Fully Integrated Dual Enrollment Program -- "FIDEP") for the benefit of Grantor's students so that Grantor's students may receive seamlessly integrated college level instruction at their high school campus.
- D. Grantee has requested that Grantor provide a recoverable grant to Grantee to be used by Grantee to develop and fund the initial operations of Doral College's FIDEP.
- E. Grantor and Grantee desire to provide terms under which Grantee will repay the grant to Grantor upon the occurrence of certain events.

In connection with the grant, the Grantee agrees, represents and warrants to the Grantor, as follows, which agreements, representations and warranties shall survive during the period of the grant, or longer as specifically set forth herein:

1. Recoverable Grant. Subject to the terms and conditions of this Agreement, Grantor hereby awards a grant to Grantee in the amount of [\$400,000.00], which represents the projected amount required to ensure that Doral College is sufficiently funded to establish the FIDEP and continue its operations. In the event that this grant amount is insufficient, Grantor may contribute additional amounts, which shall also be subject to the terms and conditions of this Agreement. The initial grant and additional grants shall be referred to collectively as the "Recoverable Grant." The Grantee shall commence repayment of the Revocable Grant to the Grantor in the event that Doral College is operating with a surplus of its operating budget for any period ending on December 31 following the execution of this Agreement. The repayment amount shall be equal to such surplus. Following the commencement of repayment, Grantee shall make payments to Grantor of the surplus (if any) of Doral College within twenty (20) days of the end of each calendar year until the balance of the Recoverable Grant has been repaid to Grantor. Notwithstanding the foregoing, the Grantee shall be required to immediately repay the Recoverable Grant to Grantor if: (a) any portion of the proceeds of the Recoverable Grant is used for a purpose other than specified in Section 3 of this Agreement; (b) a bankruptcy petition, or similar action, is filed by or against Grantee or Grantee is otherwise unable to pay its debts.

generally as they come due; or (c) Doral College's License issued by the Commission for Independent Education is not renewed or is terminated.

2. Purpose and Use of Grant Funds. All grant funds (as well as any income earned thereon) ("Grant Funds") must be expended solely for the funding of any shortfalls that may occur in the operating budget of Doral College. Accordingly, Doral College's use of the Grant Funds may solely be for the purpose of providing scholastic and academic classroom instruction and other educational services on its campus.

3. Prohibitions on the Use of Grant Funds. In order to comply with federal tax laws, Grant Funds may not be used for any of the following purposes during the Grant Period:

- (a) to attempt to influence legislation or the outcome of any specific public election;
- (b) to carry on, directly or indirectly any voter registration drive;
- (c) to make grants to individuals or organizations other than Doral College;
- (d) to undertake any activities for a non-charitable or non-educational purpose; or
- (e) to use Grant Funds for any purpose other than for the support of the Doral College operations.

4. Records and Reports.

(a) Grantee will provide to Grantor annual reports containing a financial analysis comparing the actual performance of Doral College with its operating budget. Such reports shall be delivered to Grantor within twenty (20) days of the end of each fiscal year and shall contain a certification by the Grantee that the report was prepared in accordance with general accepted accounting principles.

(b) Grantee will provide promptly such additional information, reports and documents as the Grantor may request and will allow the Grantor and its representatives to have reasonable access during regular business hours to files, records, accounts or personnel that are associated with this grant, for the purpose of making such financial reviews, verifications or program evaluations as may be deemed necessary by the Grantor.

(c) The Grantee shall provide the Grantor with immediate written notification of (i) any Event of Default; (ii) any change in the Grantee's tax-exempt status; or (iii) any material change in the Grantee's or Doral College's ability to conduct its activities generally, including but not limited to the Grantee or Doral College becoming insolvent, ceasing or being unable to pay its debts as they mature, or filing a voluntary petition for bankruptcy.

5. Effect of Default by Grantee. In the event of a breach by the Grantee of any of the agreements, representations or warranties contained in this Agreement (an "Event of Default"), the expenditure of all unexpended Grant Funds must cease immediately, and the Grantee shall

return all unexpended Grant Funds to the Grantor, together with the reports detailing the use of any expended funds.

6. Relationship. The relationship of these parties is that of Grantor and Grantee and does not constitute a partnership, joint venture, or any other type of business organization. Except as otherwise may be provided in the applicable governing documents of the Grantor or Grantee, neither party shall have the authority to act on behalf of or obligate the other party. The Grantee is a separate and independent entity from the Grantor. Operational implementation of the Recoverable Grant is the sole responsibility of the Grantee. By making this Recoverable Grant, Grantor assumes no obligation to provide other or additional support for the Grantee.

7. Grantee Representations.

(a) Grantee is validly existing and in good standing under the laws of the State of Florida, is in full compliance with all statutes, rules and regulations which govern the Grantee, and has full power and authority to execute, deliver and perform its obligations under this Agreement.

(b) This Agreement has been duly authorized, executed and delivered by the Grantee and constitutes a legal, valid and binding obligation of the Grantee, enforceable against it in accordance with its terms. No authorization, approval or order of any court or public board or body is required to be obtained by the Grantee in connection with the execution and delivery of this Agreement.

(c) The execution and delivery by the Grantee of this Agreement, and the performance by the Grantee of its obligations hereunder and thereunder do not conflict with or violate: (i) any agreement or instrument to which the Grantee is a party or by which any of its properties are bound; (ii) any judgment, order, writ, injunction or decree binding on the Grantee; or (iii) any law, rule, regulation or ordinance applicable to the Grantee.

(d) The Grantee qualifies as tax exempt under Section 501(c)(3) of the Internal Revenue Code ("Code"), and the Grantee is not aware of any proposed changes in its tax-exempt status under the Code or relevant state law.

8. Indemnification. To the fullest extent permitted by applicable law, Grantee shall indemnify and agrees to hold the Grantor, its directors, officers, employees, agents, and representatives harmless from and against any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, actions, proceedings, costs, disbursements or expenses (including, without limitation, attorneys' and experts' fees, expenses and disbursements) whether incurred in a third party action, in an action to enforce this Agreement or otherwise, for any damage whatsoever arising out of or resulting directly or indirectly from the actions of the Grantee or the failure to act by the Grantee in connection with the fulfillment of its obligations arising under this Agreement, except to the extent same is caused by the gross negligence or willful misconduct of the person seeking to be indemnified hereunder. The Grantee will pay and discharge all awards, judgments and expenses that may result from a final judgment in an indemnified suit or action.

9. Miscellaneous. This Agreement represents the entire understanding and agreement between the parties with respect to the subject matter of this Agreement, and supersedes all other negotiations, understandings and representations (if any) made by and between the parties. All of the terms and provisions of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties and their legal representatives, successors and permitted assigns, whether so expressed or not. No party shall assign its rights or obligations under this Agreement without the prior written consent of each other party to this Agreement. The provisions of this Agreement may not be amended, supplemented, waived or changed orally, but only by a writing signed by all parties to this Agreement and making specific reference to this Agreement.

If any part of this Agreement or any other agreement entered into pursuant to this Agreement is contrary to, prohibited by or deemed invalid under applicable law or regulation, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited or invalid, but the remainder of this Agreement shall not be invalidated thereby and shall be given full force and effect so far as possible. All covenants, agreements, representations and warranties made in this Agreement or otherwise made in writing by any party pursuant to this Agreement shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

The parties acknowledge that a substantial portion of the negotiations and anticipated performance of this Agreement occurred or shall occur in Miami-Dade County, Florida. Any civil action or legal proceeding arising out of or relating to this Agreement shall be brought in the courts of record of the State of Florida in Miami-Dade County or the United States District Court, Southern District of Florida. Each party consents to the jurisdiction of this Florida court in any civil action or legal proceeding and waives any objection to the laying of venue of any civil action or legal proceeding in Florida court. Service of any court paper may be effected on a party by mail, as provided in this Agreement, or in any other manner as may be provided under applicable laws, rules of procedure or local rules.

All notices and other communications required or permitted under this Agreement shall be in writing and shall be (as elected by the person giving such notice) hand delivered by messenger or courier service, transmitted by fax, or mailed by registered or certified mail (postage prepaid), return receipt requested, to the receiving party at the address appearing on the records of the party sending the notice (which address may be changed by a notice complying with the foregoing). Each communication shall be deemed to have been delivered (a) on the date

delivered, if by messenger or courier service; (b) on the date of the confirmation of receipt, if by fax; and (c) either upon the date of receipt or refusal of delivery, if mailed.

This Agreement and all transactions contemplated by this Agreement shall be governed by, and construed and enforced in accordance with, the internal laws of the State of Florida without regard to principles of conflicts of laws.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first above written

GRANTOR:

DORAL ACADEMY HIGH SCHOOL

By: Angela Ramos

Print Name: Angela Ramos

Its: Board Chair

GRANTEE:

DORAL COLLEGE

By: Luis Fuste

Print Name: Luis Fuste

Its: Board Chair

APPENDIX C

MANAGEMENT AND
COMPLIANCE AUDITS
2013 MAY 24 AM 9:29



TO:
John Goodman
Executive Director
Office of Management and Compliance Audits

FROM:
Luis Fuste
Chair, Board of Trustees
Doral College

May 22, 2013

RE: Request for Documentation

Dear Mr. Goodman:

We have received your request for several pieces of internal Doral College documentation as part of the District's audit of Doral Academy, including your requests for Doral College's payroll and salary register for the 2011-2012 and 2012-2013 academic years, Doral College's employee contracts for the 2011-2012 academic year, consultant contracts for Doral College, our Form 990 for the period ending June 30, 2012, and other documentation.

Doral College is a private institution of higher learning operated by Doral College, Inc. a non-profit, 501(c)(3) organization, independent of Doral Academy Charter High School. Doral College is not subject to the Florida Public Records law, *see* AGO 07-27, FLA. STAT. ch. 119, 206. Doral College is prepared to assist you by providing documentation consistent with its obligations under state and federal law. Accordingly, as stipulated under 26 CFR 301.6104(d)-1, we shall forward to you our Form 990 for the period ending June 30, 2012.

Thank you very much for your correspondence.

Best Regards,

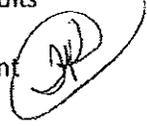
Luis Fuste, Esq.
Chair, Board of Trustees
Doral College

APPENDIX D

MEMORANDUM

November 4, 2013

TO: Mr. Jose Montes de Oca, Chief Auditor
Office of Management and Compliance Audits

FROM: Tiffanie A. Pauline, Assistant Superintendent
Charter School Support 

SUBJECT: DRAFT AUDIT REPORT – DORAL ACADEMY CHARTER SCHOOL (OCTOBER 18, 2013)

This correspondence is in response to the Office of Management and Compliance Audits' (OMCA) draft audit report, *Audit of Questioned Financial Transactions of Doral Academy Charter High School*. After a thorough review of the report, I accept the OMCA's recommendation to the Office of Charter School Support (CSS) regarding solutions to better ensure charter school governing boards are engaged, informed, independent and accountable to their students, parents/guardians and the community at large. CSS will solicit assistance from the School Board Attorney and the Office of Intergovernmental Affairs, Grants Administration and Community Engagement to work with policymakers and charter school stakeholders to craft legislation and policies for the upcoming legislation session relative to the concerns raised in this report.

Should you require additional information, please call me at 305-995-1403.

TAP:nkr
M075

cc: Mr. Walter J. Harvey
Mrs. Valtena G. Brown
Ms. Iraida R. Mendez-Cartaya
Ms. Melinda L. McNichols
Mr. Julio Miranda
Mr. Jon Goodman

APPENDIX E

DORAL ACADEMY CHARTER HIGH SCHOOL'S RESPONSE TO OMCA DRAFT AUDIT REPORT DATED OCTOBER 18, 2013

Date: November 6, 2013

Eleni C. Pantaridis, Esq.
Law Office of Eleni C. Pantaridis, PA
2385 NW Executive Center Drive
Suite 100
Boca Raton, Florida 33431
Tel: 561-981-2685
Fax: 561-423-2916
epantaridis@gmail.com
Counsel for Doral Academy

Introduction

This constitutes Doral Academy Charter High School’s response to OMCA’s draft report (“Report” or “draft Report”) entitled “Audit of Questioned Financial Transactions of Doral Academy Charter High School” regarding Doral Academy Preparatory Middle/High (“Doral”). In a good-faith effort to work together with OMCA, we have endeavored to discuss the substance of the transactions, with minimal discussion about what we believe to be the improper motives behind the Report, and notwithstanding the fact that only six of sixteen pages of the Report itself are dedicated to the merits of the two audited transactions. However, if the draft Report is not meaningfully revised, we are prepared to publicly share our views more fully.

Academica and Doral Academy

Academica serves the largest number of high-performing charter schools in Florida. Doral Academy Middle and High are “A” schools with a graduation rate of 99% that exceeds both local and national standards. The charter schools Academica services are also fiscally responsible and have achieved surpluses which are regularly deployed to improve student education. The draft Report properly notes the excellence of Doral’s A-grade, highly ranked schools.¹

Doral’s governing board is independent of Academica and has discharged its duties in an exemplary manner, as reflected through the audited transactions themselves. Ms. Angela Ramos, the President and Chair, is a parent of Doral Academy students—one currently attending and the other a recent graduate. Mr. Luis Fuste is a practicing attorney in Miami. Mr. Manny Cid is a former board member who was recently elected to the Miami Lakes City Council. Mr. Rovirosa and Ms. Gil are principals at and employees of two other charter schools. While those schools are also clients of Academica, Mr. Rovirosa and Ms. Gil report to the governing boards of their schools, not to Academica, and they provide the Doral board with extremely valuable educational expertise.

Doral Academy Middle and High’s principal is Douglas Rodriguez, a former M-DCPS principal at Ronald Reagan High, where he won Principal of the Year. He later became principal of Miami Central High School and turned it from an “F” to a “C” school, prompting a school visit from President Obama. Consistent with his track record, Mr. Rodriguez is now leading Doral Academy in academic excellence.

The Audited Transactions Greatly Benefited Doral, its Students and the Community

The draft Report does not identify any violation of law or any improper accounting with respect to the two audited transactions. Instead, it criticizes the two transactions in a vague and subjective manner: (1) the recoverable grant for Doral College supposedly “bypassed the standard organizational control of board approval and was made without transparency” while (2)

¹ “All five Doral Academy schools received an A grade under the State of Florida’s Academic Accountability system for the 2011-12 school year. Furthermore, the 2013 edition of “Best High Schools in America” by U.S. News and World Report magazine ranks Doral Academy Charter High School 35th of 777 public high schools in Florida, and 591st of 21,035 nationally, based on various criteria including State proficiency test scores and college readiness.” Report at 7.

the improvements to the school's facilities supposedly "subjected the High School to the risk of losing such investment to the Landlord." As explained below, these conclusions are fallacious. They also ignore the great benefit of the two transactions to Doral, its students and the community:

- Doral College. The recoverable grant for Doral College was used to provide Doral High students with easy access to dual enroll in college for free, resulting in significant savings to the school. Without Doral College, Doral High would incur the costs charged by state schools such as Miami-Dade College and FIU for college credits, which costs have become exponentially expensive. Doral estimates that it will save approximately \$450,000 per year in such costs through Doral College. These yearly savings will go directly back to programs that enrich Doral's student body and demonstrate the wise decision-making of Doral's governing board. Notably, the college has already reimbursed more than 62 percent of the subject funds.
- Expansion of High School Campus. Doral expanded its high school campus at the request of Doral Mayor Juan Carlos Bermudez, to accommodate an additional 900 students. Doral funded the construction through a not-for-profit lender, and the increased revenue from the additional students far surpasses the cost of building the structure. That revenue has been and will continue to be re-invested in additional programs for Doral's students, including a new band program including new instruments, a recording and television studio, a fully equipped gym and weight room, projectors and "smart boards" in every classroom, computer labs equipped with 300 computers, and a new science program and related equipment.

The Auditors

OMCA auditor Mr. Jon Goodman led this audit. Academica's prior experience with Mr. Goodman demonstrates that he is not an independent, objective auditor. Mr. Goodman does not support the charter school system. Indeed, on March 3, 2011, he wrote a letter to the editor of the Sun-Sentinel calling for the recall of Florida Governor Rick Scott, a staunch charter school supporter, insisting that failure to do so would result in "public education [being] fully destroyed." Jon Goodman, *Op.-Ed., It's time to begin Gov. Scott recall*, SUNSENTINEL, Mar. 3, 2011. He has been at the forefront of every charter school audit since the 2004-2005 school year.

Mr. Goodman's conduct during this audit also demonstrates his lack of independence and objectivity. For example, on June 21, 2013, Mr. Goodman appeared unannounced and uninvited at a Charter School Review Committee ("CRC") meeting to urge that Doral charter school applications be rejected, interrupting the meeting to announce that "we're doing an audit right now of Doral Academy High School, it's a special performance audit." See Appendix A (Transcript of CRC Meeting) ("Tr.") at 39. This outburst violated Mr. Goodman's duty of confidentiality under OMCA's Policies and Procedures Manual ("Manual").² Mr. Goodman also

² See OMCA MANUAL at 8 ("Staff members shall not discuss the status of ongoing internal audits or investigations with persons that are not a necessary part of the project.").

OMCA comment:

The referenced conclusions are factual and beyond dispute.

OMCA comment:

Doral College is currently not accredited by the Commission on Colleges of the Southern Association of Colleges and Schools or the Accrediting Council for Independent Colleges and Schools. Therefore, it is not eligible to participate in the State's Dual Enrollment Program under Section 1007.271, Florida Statutes. Doral Academy Charter High School students will not earn high school credit for courses taken at Doral College. Also, the College's courses will not be recognized or accepted by many other colleges or universities, such as Florida International University, University of Florida and Miami-Dade College (MDC). Courses taken at Doral College are not transferable to these institutions and will not earn credit towards a degree. No documentation or evidence of estimated cost savings was cited in the School's Governing Board meeting minutes or otherwise provided to us. Currently, students of Doral Academy Charter High School are participating in the Dual Enrollment Program at MDC.

OMCA comment:

"The audit activities of the Office of Management and Compliance Audits are subject to quality review at least every three years by a professional, non-partisan objective group utilizing guidelines endorsed by the U.S. Government Accountability Office." OMCA MANUAL at 69. Please note that OMCA has received "full compliance" peer review opinions for all audits conducted since 1992, even before reviews became required by the Government Auditing Standards in the 1994 Revision. Please also note that the standards and principles of independence and objectivity are most central to Government Auditing Standards (GAS, December 2011 Revision at 10 and 27) and the corresponding peer review process.

Multiple audit staff and other experts with many years of experience, professionally recognized certifications and extensive training contributed substantially to the conduct, review and reporting of this audit.

OMCA comment:

Please note that neither charter schools nor "the charter school system" are the subject of the cited letter to the editor. The words "charter" or "charter school" are not even stated, referenced or alluded to in the letter. The letter was written at the time the Governor's budget proposed cuts of \$3.3 to \$4.8 billion in public education, which includes funding for traditional schools, as well as charter schools.

OMCA comment:

Pursuant to the School Board of Miami-Dade County Policies and By-laws, the charter school Contract Review Committee (CRC) "shall be comprised of ... Management and Compliance Audits (non-voting)." See SCHOOL BOARD POLICY 9800.

OMCA comment:

The OMCA maintains that the referenced auditor properly fulfilled his assigned duties in the audit function for the Miami-Dade County School Board in his attendance and conduct at the June 21, 2013, CRC meeting, in accordance with applicable professional standards, policies and statutory oversight requirements.

accused the Doral board of “being uncooperative in the audit,” and he attacked Mr. Rodriguez for being “99.9 percent inaccurate, disingenuous” when Mr. Rodriguez attempted to explain Doral’s cooperation with the audit. *Id.* at 41, 43, 45. Mr. Goodman even “put on the record” his “recommendation” that the CRC not entertain further contracts with Doral. *Id.* at 41, 46-47. Eventually, he was interrupted by the CRC members, who expressed their unease about his discussion of an active audit in that forum.³

During an August 21, 2013 teleconference, Doral and its independent auditors (the HLB Gravier firm) suggested that Doral’s Landlord could provide a letter or lease amendment addressing any concerns the auditors had with respect to the termination provision of the Doral lease. Mr. Goodman dismissed the suggestion and could not explain his view that the letter of clarification was insufficient. Instead, he offered that the school would have an “opportunity to respond” to the draft Report.

Mr. Goodman’s conduct demonstrates bias and a lack of independence, contrary to the requirements of OMCA’s Manual. OMCA MANUAL at 7 (“It is therefore essential that the audit staff be independent *and be perceived as such.*”) (emphasis added). To the extent the draft Report represents the work of Mr. Goodman, it should be withdrawn, given his clear breaches of OMCA’s own requirements.

Report Pages 3-4: Identification of Audited Transactions and Audit Objectives

In its October 19, 2012 letter to Doral, OMCA stated that it was “in the process of respectfully questioning the legality and propriety of” Doral’s recoverable grant agreement with Doral College meant to provide Doral’s students with dual credits, but it did *not* explain OMCA’s legal or other concerns. OMCA also did not explain its concerns regarding improvements by Doral to its leased premises. OMCA auditors appear to have simply targeted the two transactions as part of a fishing expedition.

The draft Report confirms this. Rather than articulating concrete criteria for the review of the transactions, the Report identifies “objectives” so vague that they permit “findings and recommendations” that are no more than the personal opinions of the auditors or their lawyers. These amorphous “objectives” are: “determine whether the two aforementioned, questionable transactions were: proper; transparent; in the best interest of the charter school, students, parents/guardians and the community at large; in accordance with applicable laws, rules, regulations; and whether the control structure over the use of publicly derived funds is adequate.” (the “Objectives”). Report at 4.

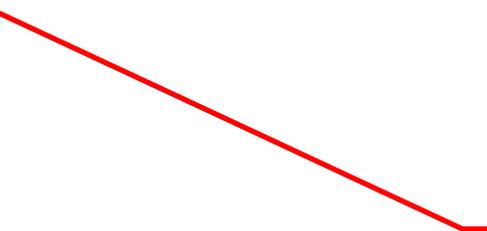
Contrary to OMCA’s Manual, audit staff did not “try to obtain advance concurrence and agreement on the appropriateness of the criteria with management” of Doral. OMCA MANUAL at 57.

³ See Tr. at 45:22-46:17 (“MS. PAULINE: Jon, I’m not trying to be – I’m feeling a bit uneasy because you -- you said the word investigation. . . . [M]y concern is we’re getting into details of something that’s being reviewed by the auditor and I think we may be going to that line.”); 50:13-51:1 (“MS. McNICHOLS: Jon, what’s – the other thing, Jon, I mean honestly, if there’s going to be arguing about the facts about who provided what, I mean, (inaudible) and whether or not it’s appropriate, that’s just not this forum. That will be an argument that we have somewhere else.”).



OMCA comment:

At the August 21, 2013 teleconference, neither Doral nor Gravier offered or even mentioned amending the lease.



OMCA comment:

The audit report represents the work of several staff members of the OMCA, including two Assistant Chief Auditors and the Chief Auditor himself. As with every audit conducted by OMCA, it was conducted in an unbiased, professional manner. The subject of independence does not even merit a response.

With respect to both audited transactions, OMCA states that it researched GAAP and GASP standards and pronouncements, *id.* at 4, but fails to cite a single GAAP, GASP, or other accounting standard in its draft Report. “Wherever applicable, a specific government regulation or agency policy or procedure should be referenced.” OMCA MANUAL at 57. The draft Report certainly does not identify any violation of GAAP, GASP or any other accounting or legal standard. To the contrary, Doral has provided explanatory information that shows the two transactions were beneficial to the school and its students.

In light of this, the Report’s repeated use of the word “questionable” to describe the two audited transaction is incorrect and inflammatory. The fact that the auditors questioned the transactions does not make them “questionable.” This pejorative term must be removed entirely from the draft Report and replaced with the term “audited transactions.”

Report Pages 4-5: Objectives, Scope, and Methodology

The “Audit Procedures” section of the Report contains several bullet points that should be deleted or revised.

- OMCA must revise the fifth bullet point, which claims that eight individuals affiliated with Doral or Academica “refused” the auditors’ request to meet. Those individuals did not refuse to answer questions or provide information. On the advice of counsel, they offered to answer *written* questions so that the audit record would be clear. With respect to members of Doral’s governing board, the auditors refused to submit written requests. With respect to Mr. Rodriguez, *OMCA submitted a lengthy list of questions, which he in fact answered.* As written, this bullet point is misleading.
- The first, ninth, and tenth bullet points are insufficient. They generically reference authorities that the auditors reviewed without any specificity. For example, with respect to “best practices for grants,” the auditors do not explain what they researched or what are considered to be “best practices.”

Report Pages 6-9: Corporate Governance

These Report pages contain incorrect and misleading information. They unfortunately are an attempt to create the illusion of an improper relationship between Doral and Academica and to set up governance recommendations that are simply the mere opinions of OMCA’s auditors and their lawyers.

The auditors fret that the “selection and composition of charter school governing boards in the State of Florida overall” has been “a recurring worry for us.” Report at 6. Doral and the other Florida charter schools serviced by Academica are successful and none of their governing boards have ever been found to have engaged in improper governance. Any such “worry” is without basis.

OMCA’s extension of its governance “concerns” to members of Doral’s board is also baseless. The composition of Doral’s board is completely consistent with all state and district requirements and in no way violate any Florida statutes or the Charter School contract between

OMCA comment:

Although we do not consider the term "questionable" incorrect, and it was not intended to be inflammatory, we removed the word from the final report to address the auditee's concern.

Miami-Dade County Public Schools and Doral Inc. None of Doral's board members have any financial interest in Academica, the Landlord or any other entity that does business with Doral. Academica provides management services to Doral as a vendor. Its contract is renewed at the discretion of the board and Academica has no decision-making authority at Doral. Academica is hired for its exemplary record in helping to manage charter schools and its familiarity with compliance and budgeting that are necessary elements for any successful charter school. There has never been a suggestion that Doral's board members have not properly discharged their fiduciary responsibilities to Doral. In fact, the Miami-Dade School Board has been well aware of the composition of the board for many years and no Miami-Dade School Board Member has expressed concern over its configuration.

Significantly, OMCA does not cite objective criteria with respect to its "concerns" or recommendations regarding board composition. Instead, the Report merely cites its lawyer's opinion regarding the supposed lack of "complete" independence "among subject entities." Report at 6.⁴ Respectfully, at best the opinion is mere supposition and at worst a rock-throwing exercise. It is not a basis for any appropriate audit finding or recommendation. Indeed, it clearly violates OMCA's Manual, which requires that findings be "documented by facts, not opinions, and evidence that is sufficient, competent and relevant." OMCA MANUAL, at 58.

In addition to its unfounded "concerns" about Doral's board, these Report pages have erroneous and misleading information, as explained below:

Victor Barroso (p. 6). Mr. Barroso is not on the Doral board and has not been since 2009, long before the audited transactions. Yet the Report inexplicably claims that he "supported and executed at least two substantial transactions . . . which appear to have subjected the School to the risk of losing substantial capital investment to the Landlord." Report at 6. This is false. To be clear, Mr. Barroso was not involved in the audited transactions other than to sign one contract for a minor portion (approximately 10%) of the improvements at issue (in 2009, while he was still on the board and *before* he started working for Academica), and the contract was ratified by Doral's board. Moreover, the transactions never subjected the School to any material risk. OMCA must remove this false information from the Report.

Mr. Rovirosa and Ms. Guilarte (p. 6). The suggestion that Academica has a "pivotal role in selecting" the principals for Mater and Somerset schools is disrespectful to these two principals and to the governing boards to whom they report. It is frankly an unprofessional and unwarranted attack on two excellent board members. OMCA has not identified any facts that would support even a suspicion that Mr. Rovirosa and Ms. Guilarte would act contrary to the best interests of Doral and its students merely because they are the principals of other schools also serviced by Academica.

⁴ But even the lawyer's opinion is a jumble of imprecise speculation about a litany of "possible" horrors without reference to any specific transaction and is replete with phrases such as "*possible* conflict of interest," "*possibly* an unsound environment for detection and correction of problems," "*may* not be as strict with the operator . . . to the same degree as they would otherwise; "*may* not be as likely to file reports to the State," "*may* be difficult for Academica to provide unbiased, independent oversight" and "it is *possible*, through pure inadvertence alone, that not all notices find their way into the employer's possession." Report, Appendix A, at 2 (emphasis added).

OMCA comment:

Mr. Victor Barroso supported and signed on behalf of the legal entity of Doral Academy High School: 1)the lease between the School and its landlord (School Development, LLC) dated April 1, 2004, inclusive of section 3.5 (early termination provision) and 2) the contract in the amount of \$551,401 for leasehold improvements dated February 9, 2009.

Interview with governing board members (p. 7). As explained above, Doral’s governing board members did not refuse to answer questions or provide information. On the advice of counsel, they offered to answer *written* questions so that the audit record would be clear. With respect to members of Doral’s governing board, the auditors refused to submit written requests. With respect to Mr. Rodriguez, *OMCA submitted a lengthy list of questions, which he in fact answered.* As written, this bullet point is misleading.

Doral College (p. 7). Noting the relationship of some of Doral College’s trustees to charter school whose students attend the college’s courses is unremarkable.

Academica and the Landlord (p. 8). The draft Report’s speculation as to the ownership of the Landlord by “the stockholders of Academica” is irrelevant to the two audited transactions, neither of which benefited the Landlord, Academica or their stockholders. None of Doral’s directors, officers or employees has a financial interest in Academica or the Landlord.⁵

Chart of “Entity Relationships” (p. 9) This chart is confusing and misleading, and like pages 6 through 8, serves no purpose with respect to the audited transactions. The “Victor Barroso” bubble incorrectly implies that he is a member of Doral’s governing board and that he was involved in the transactions; the fact that three of 49 Academica-managed charter schools have hired a common architect/construction manager (Civica, with whom they like to work) means nothing; and the arrow between Academica and Doral College suggests a relationship that simply does not exist—Mr. Roca, Ms. Figueroa, and Ms. Flores (the individuals listed in that box) are not affiliated with Academica. These are just a few examples. The chart is unduly prejudicial and must be deleted from the Report.

Pages 10-12: Audited Transaction 1: \$400,000 Grant

Finding: “The School’s 400,000 Grant Of K-12 Education Tax Dollars To An Independent College, Bypassed the Standard Organizational Control of Board Approval And Was Made Without Transparency.”

The finding that the \$400,000 grant “bypassed” the standard organizational control and was made “without transparency” is not supported by any evidence or authority whatsoever.

Among its many problems, this finding ignores the information Doral has provided to OMCA. The draft Report makes the unremarkable observation that “appropriate controls and transparency” are necessary to ensure that “expenditures and expenses of publicly derived funds will be used for purposes other than those intended,” but there is and can be no allegation of impropriety. The high school indisputably intended to, and did, allocate the money to start a college for its students. Doral College will confer an immense benefit upon Doral’s students (a

⁵ The services Academica offers its charter school clients include access to facilities provided by affiliated real estate development organizations. To be clear, those organizations are independently managed, and Academica’s service agreements are not conditioned upon any facility agreement. The majority of the schools Academica services are in facilities that are either owned by the schools themselves or by independent landlords that are unrelated to Academica. In any event, the auditors’ request for the Landlord’s ownership reflects a double-standard. M-DCPS does not require other lessors to charter schools, or even its own lessors or vendors, to disclose their ownership, and with good reason: there is no such requirement under any Department of Education or M-DCPS rule.



OMCA comment:

The referenced chart and pages 6-8 of the draft provide important background information for the reader to understand the report's findings and recommendations. OMCA MANUAL at 65. The arrow on the chart between Academica and Doral College depicts Academica's management of the College.

point the Report fails to credit), and the board supported and approved this transaction from the outset. Notably, the college has already reimbursed more than 62 percent of the subject funds.

The draft Report ignores the fact that the initial “outlay” of funds was an *internal* transaction, confusing the establishment of a bank account with the expenditure of funds. At the time, the high school and college were under the same entity. After conceiving the idea for the college, the high school simply set aside the funds (\$400,000), in an *internal* bank account. Only later was the internal loan converted to a recoverable grant, after Doral High School and Doral College became separate entities.

Second, the draft Report makes no mention of the fact that the internal loan, and subsequently, the grant, were *both* reflected in numerous budgets that the governing board approved at *every* meeting in 2011 through 2012. Instead, the draft Report says the grant was “not approved or even considered” by the governing board in a publicly noticed meeting until November 5, 2012, after the audit group “questioned” the grant and therefore constituted an internal control deficiency. Report at 11. This is simply wrong. As reflected in the minutes for the publicly noticed August 2, 2012 board meeting, which Doral provided to OMCA, the board *did* approve a revised 2011-2012 budget reflecting the conversion (i.e., reallocation) of the \$400,000 to a grant. When the budget was submitted to the board for approval, a discussion took place about the entire school budget, *including the \$400,000*. This discussion is part of the normal process that Doral has used for many years and OMCA has never questioned in the past. See DORAL000134-139; DORAL 000238-241; DORAL001212. The OMCA auditors have this information but have chosen not to include it in the draft Report.⁶

Third, the draft Report improperly suggests that Doral High and its students will not benefit from the transaction with Doral College because Doral College is not yet accredited. However, all colleges start as unaccredited. Part of the accrediting process includes having a graduating class; that is in process now at Doral College. The College is duly licensed by Florida’s Commission on Independent Education (CIE). Licensing was a long and rigorous process that required Doral College to demonstrate capacity akin to that required for accreditation. The Report fails to mention that process, instead focusing on accreditation—an entirely voluntary and optional process which, in any event, Doral College is in the process of obtaining from the Southern Association of Colleges & Schools (SACS). Doral High School is already accredited by SACS, as is Doral Academy Middle and Doral Academy Elementary. M-DCPS is actually currently in the process of seeking SACS accreditation for its elementary and middle schools (the high schools are already accredited). Just as we are confident that M-DCPS will be successful in obtaining the accreditation of their schools, we are equally confident that Doral College will obtain its accreditation. Students are fully informed that the college is in the accreditation process—which has been the case for many fine local institutions, including the law school at Florida International University and others. OMCA’s auditors do not list a single reason that would suggest that Doral would not qualify to be accredited when that process is concluded.

⁶ Additionally, the Report indicates that OMCA was not provided documentation as to the terms of the intra-company loan. Report at 10 & n.3. This is now moot, as Doral recently provided the October 12, 2010 Intracompany Promissory Note and the \$400,000 disbursement record through counsel on October 23, 2013. See DORAL001496-98; 000001-02.

OMCA comment:

This information is clearly noted in the draft (10/18/13 DRAFT at 10) and final audit reports.

OMCA comment:

This paragraph of the response is completely inaccurate and misleading. The first time the term "recoverable grant" is even mentioned in the Governing Board meeting minutes is November 5, 2012, four months after the grant was executed. Minutes provided for the August 2, 2012 Board meeting (which itself occurred one month after the execution of the grant on June 30, 2012) make no mention of the words "recoverable grant" or "grant" in either the minutes or attachment. The attached, after-the-fact, undated, revised 2011-12 budget reflects only a \$400,000 "Professional / Technical Services (loan reallocation)." Therefore, the execution of the "recoverable grant" on June 30, 2012 was certainly not transparent.

OMCA comment:

Doral College is currently not accredited by the Commission on Colleges of the Southern Association of Colleges and Schools or the Accrediting Council for Independent Colleges and Schools. Therefore, it is not eligible to participate in the State's Dual Enrollment Program under Section 1007.271, Florida Statutes. Doral Academy Charter High School students will not earn high school credit for courses taken at Doral College. Also, the College's courses will not be recognized or accepted by many other colleges or universities, such as Florida International University, University of Florida and Miami-Dade College (MDC). Courses taken at Doral College are not transferable to these institutions and will not earn credit towards a degree. No documentation or evidence of estimated cost savings was cited in the School's Governing Board meeting minutes or otherwise provided to us. Currently, students of Doral Academy Charter High School are participating in the Dual Enrollment Program at MDC.

Fourth, on page 10, OMCA says that “[t]he authority and legality of [the \$400,000] expense is also not clear to us.” There is no citation to any authority as to how the transaction could possibly be considered unauthorized or illegal. The auditors’ unsupported opinion on the “legality” of the transaction is inappropriate and contrary to OMCA Manual requirements as explained above. This sentence needs to be deleted, along with similar language at Recommendations 1(a) and (b).⁷

Fifth, on page 11, OMCA turns to amorphous and unidentified principles regarding the “basic and standard elements of a grant of publicly derived funds, including the lack of a grant application/proposal, detailed grant budget, project deliverables with due dates, and performance accountability measures.” There is no citation to any authority for these standards, and this part of the Report misunderstands the nature of the audited transaction. This was not a situation where numerous entities were competing for a grant from a third party. In any event, the school is happy to implement these suggestions, but the Report must make clear that they are voluntary and nonessential.

In sum, there were *no* internal control or transparency deficiencies with respect to this transaction. As written, this section of the Report does not paint an accurate picture of the transaction, ignores the key information described above, and mischaracterizes a praiseworthy initiative. This section should be re-written to lay out a clear chronology as set forth above, to remove all references to the “legality” of the transaction, and to address and analyze each of the audit Objectives separately.

Accordingly, Recommendation 1(a) should be removed entirely since, as set forth above, internal financial controls *were* in place to ensure that the transaction was transparent and properly considered and approved.

Recommendation 1(b) should read: “The School has indicated that it would consider implementing a grant application/proposal, detailed grant budget, project deliverables with due dates, and performance accountability measures. While these are not mandated by any authority, they could be beneficial.”

Pages 13-15: Audited Transaction 2: Building Improvements

Finding: “The Charter School Governing Board’s Approval and Execution of Construction Contracts (and Related Transactions) Approximating \$4.5 Million For Additions and Improvements To Its Leased Facilities, Subjected The High School To The Risk of Losing Such Investment To The Landlord.”

This finding likewise is not supported by any evidence or authority. There was never any material “risk” to Doral. Instead, there was always an understanding that the Landlord had the full intent to give the school the benefit of the investment by reimbursing the school at the end of the lease for the unamortized cost of the improvements, regardless of when the lease ended.

⁷ Furthermore, the term “material and unique” expense is not an accounting or legal term, yet it is repeated throughout the Report.

OMCA comment:

Applicable Florida Statutes, including F.S. 1002.33 and 1011.62, describe Charter School funding under the Florida Education Finance Program. We could not identify any reference to the authority or legality of a charter school using such K-12 funds for a grant to a private, independent, unaccredited institution of higher learning.

OMCA comment:

As an example, the Florida Department of Education's Green Book (Project Application and Amendment Procedures for Federal and State Programs) identifies and defines the elements stated in our report (i.e. application, budget, deliverable and performance measures). GREEN BOOK at Glossary 2, 5 and 11.

Shutts & Bowen LLP comment:

To state the obvious, multi-million dollar reimbursement obligations usually are evidenced by documents and not “underlying intent.” Indeed, these types of understandings are expressly set forth in leases at the time they are drafted.

The draft Report makes much of the early termination clause in the lease, but its concerns are much ado about nothing. First, the draft Report ignores the important precondition to such early termination: the Landlord is unable to exercise that provision without first paying off a large, twenty-year bond issue which likewise has onerous prepayment conditions. The remote and unlikely nature of the early termination is clear from the lease history: Doral has occupied the leased premises for almost ten years without any invocation or even suggestion of early termination.

Second, to eliminate even the suggestion of risk, and to clarify the prior understanding between the parties, the Landlord provided Doral with a letter contract dated July 3, 2012, which requires the Landlord to reimburse Doral for any tenant improvement that Doral had not yet amortized in the event the lease were terminated. *See* DORAL000228-29. The auditors concede the fact that this provision exists, but engage in hyper-technical criticism divorced from reality. Relying on its lawyer's opinion, the draft Report improperly claims that the letter contains "significant flaws" and speculates that the letter "*may not be legally enforceable.*" Report at 14. Once again, the lawyer's opinion does not cite any authority, is simple conjecture, and is no substitute for the facts required by OMCA's Manual as the basis for a legitimate audit finding. In fact, the letter is wrong.⁸

More importantly, as Doral was always willing to do and as conveyed to Mr. Goodman, Doral has even offered to provide additional assurances from the Landlord. But, intent on making the facts fit their predetermined conclusions, OMCA's auditors have consistently ignored this offer and resisted Doral's attempts to resolve any legitimate concerns. For example, and as

⁸ The hyper-technical "flaws" cited at Page 3 of the Shutts & Bowen opinion are incorrect:

- The opinion states that (i) "most lease amendments need to be witnessed" but does not opine that the Doral letter had to be witnessed and does not explain the danger or risk posed by the lack of a witness. Shutts & Bowen is wrong on its apparent interpretation of the law, in at least two ways. First, as the letter did not attempt to create an estate in real property (rather, it confirmed that the Landlord would not exercise an option to shorten the leasehold estate that was created), it was not required to be witnessed. The lease did of course create the leasehold estate, and it was witnessed in accordance with law. Second, it is the law in Florida that even if the side letter needed to be witnessed, which it does not, the tenant would be entitled to enforce it via an estoppel argument.
- The opinion states that (ii) "the letter refers only to the lease 'expiration' and not 'early termination.'" In fact, the letter says, "[u]pon expiration of the lease *at the end of its term.*" DORAL000228 (emphasis added). That language works perfectly fine. Even if the Landlord exercised its right to end the term early, that would trigger the payment of the unrecovered tenant improvement costs, if any.
- The opinion says: (iii) "the letter states that this payment obligation is guaranteed by all of Landlord's members but we do not know whether School Development II, LLC and Wolfson Hutton Company (e.g., the signatories on the letter) constitute all of Landlord's members, and if not, this payment obligation most likely would not be enforceable against any member who did not sign." There has been no question as to the Landlord's liquidity, and therefore, this concern is unfounded.
- The opinion complains that (iv) "the signatory of the letter is not the same entity as the Landlord." As HLB has previously explained, that is simply a typographical error. *See* DORAL001490.
- The opinion implicitly criticizes the timing of this letter as being "8 years after the lease was signed." Of course this was signed eight years after the lease was signed—there was no need to have such a letter unless and until the tenant sought Landlord's consent to construct additional improvements. As the letter states, it is confirming in writing the agreements reached between Landlord and tenant at the time tenant obtained Landlord's consent to such construction.

Shutts & Bowen LLP comment:

Although we acknowledge this pre-condition to termination, our concern with this provision remains. Moreover, this pre-condition to termination also can be satisfied by substitution of collateral, which is expressly permitted under the Mortgage. Under the latter scenario, the Doral property could be replaced by another property as collateral for the Mortgage. Once that occurs, the Doral lease can be wiped out.

Shutts & Bowen LLP comment:

Leases and amendments almost always are witnessed. See Florida Statute Section 689.01. Although the statute is slightly vague regarding lease amendments, the better practice among seasoned real estate lawyers is to have lease amendments witnessed. In addition to the Lease Amendment dated July 3, 2012, the August 27, 2013 Amendment to Lease recently delivered also presents a similar issue. The signature of Landlord is witnessed but not that of Tenant.

Shutts & Bowen LLP comment:

Again to state the obvious, a guaranty is not enforceable against a guarantor who does not sign it. This point has nothing to do with whether Landlord is liquid.

Shutts & Bowen LLP comment:

A landlord's right to terminate is always dangerous to a tenant. It just becomes that much more dangerous as debt is incurred and capital improvements are made.

explained above, during a teleconference on August 21, 2013, when Doral and HLB suggested that the Landlord execute an additional letter of clarification, Mr. Goodman said that would not be good enough. Now, the Report asks Doral to do just that. *See* Recommendation 2(b).

All of this notwithstanding, the Landlord executed a waiver of early termination on August 27, 2013, rendering the entire issue moot. *See* DORAL000244. If OMCA would like to suggest any alternative, specific language, we are confident that the Landlord would be more than happy to adopt it. Respectfully, however, these are immaterial issues that “do not warrant becoming reportable audit findings.” OMCA MANUAL at 58.

Recommendation 2(a) states that the school should ensure the board has a sufficient understanding of these types of “major and complex transactions.” This recommendation is out of place; the board’s understanding of the second transaction is beyond dispute, as the board approved and ratified the transaction at its December 2, 2010 meeting. Report at 13. This recommendation should be deleted.

Recommendation 2(b) suggests (i) that the Landlord re-draft and re-execute July 3, 2012 letter/lease amendment, and (ii) amend any similar leases by Doral Middle School or other Doral Academy charter schools. The first suggestion is moot and therefore should be removed. The second suggestion is outside of the scope of the audit but not objectionable.

Recommendation 2(c) recommends that the school coordinate with the Landlord to have the Landlord attempt to obtain a non-disturbance agreement with the Mortgagee, relying solely on the Shutts & Bowen Report for support. OMCA auditors never raised this issue prior to the draft Report and it is not even discussed anywhere in the Report, because it was completely outside of the scope of the audit. In fact, there is of course a Subordination Nondisturbance and Attornment Agreement (SNDA) in place for the Doral lease under the existing bond financing. That document has been publicly recorded. *See* Volume 22246, Page 3991, Public Records of Miami-Dade County. It appears that Shutts & Bowen only included this analysis in its opinion because OMCA did not provide the firm with clear objectives, context, or full information, as explained below.

Recommendation 3 is inaccurate and irrelevant. As set forth in the discussion regarding pages 6-9, there is nothing to show any “lack of independence” or checks and balances. Doral’s board is completely independent from its vendors and its composition is consistent with all applicable authorities. This recommendation is the result of pure speculation.

Recommendation 4. This recommendation to the Office of Charter School Support, including proposals for legislative changes, is improper. OMCA should not be a platform for its auditors’ political agendas. This recommendation is a vague mish-mash of buzzwords and aspirations that the District *itself* does not follow.

Appendix A. Finally, the Shutts & Bowen opinion should not be attached to the Report. It appears that OMCA did not provide Shutts & Bowen with clear objectives or context for its opinion, but instead asked the firm’s real estate lawyers to review nearly two dozen documents and advise if they found anything to be “unusual” in their “general experience.” As a result of the overbroad instruction, the Shutts & Bowen opinion discusses issues far outside of the scope

OMCA comment:

OMCA certainly does not agree with the School and its attorney's assertion that the facts surrounding the early termination provision are "immaterial issues." The School was contractually subjected to the risk of losing capital investment of publicly derived funds to its landlord, ranging from \$913,533 in 2009 to \$5,446,968 as of June 30, 2012. At a minimum, this demonstrates that the Doral Academy Charter High School's Governing Board members did not understand the transactions and arrangements which they approved. "The development of findings calls for application of the five basic elements [of] Criteria, Condition, Cause, Effect [and] Recommendation." OMCA MANUAL at 55.

OMCA comment:

Because it is unclear to us whether the School is adequately protected via a Non-Disturbance agreement (see page 54), and because it would require additional analysis according to Shutts and Bowen, we have removed recommendation 2(c) from the final audit report.

OMCA comment:

The recommendation is in accordance with sections 7.14, 7.28 and 7.29, Government Auditing Standards.

of the audited transactions—particularly at Sections 1, 3, 4 and 5. Attaching this to a publicly disseminated report would unduly prejudice Doral, who never had an opportunity to address the non-audited issues. Section 3 perfectly illustrates this prejudice: it incorrectly states, “from the documentation provided to us, it appears that, contrary to what is required under Section 29.2 of the Lease, there exists no separate Nondisturbance Agreement (except under the \$7,470,000.00 loan), which would prevent Mortgagee from foreclosing on Tenant and then, as permitted under applicable law, simply ‘wiping out’ the Lease.” That is not accurate. There is in fact a nondisturbance agreement.⁹ Doral gladly would have provided this information upon request. The draft Report already quotes the relevant portions of the Shutts & Bowen opinion and there is no reason to attach the extraneous ones other than to attract media attention.

We hope that OMCA will be careful in its preparation of the final Report, and we request another meeting prior to the final Report to address any remaining concerns.

⁹ The existing SNDA under the bond deal covers either type of default situation: if the direct loan on the Doral High property goes into default, or if there is a cross-default, the tenant and its tenancy are protected under the SNDA from being “wiped out.” It is the foreclosure of the mortgage on the property by the bond trustee—not the nature of the default—which allows the foreclosure remedy, from which the tenant is protected by the SNDA.



Shutts & Bowen LLP comment:

The Non-Disturbance Agreement in favor of Tenant relates to a Mortgage dated April 1, 2004 and a Promissory Note in the original principal amount of \$7,470,000. The cross-collateral issues arise in connection with trust documents relating to a \$53,700,000 loan agreement. It is unclear whether the existing Non-Disturbance Agreement protects Tenant with regard to both of the above loans or just the loan for \$7,470,000. Additional analysis of the trust documents would be required to determine conclusively if the Non-Disturbance Agreement provides adequate protection.

1 Mr. GOODMAN: I -- Ms. Pauline.

2 MS. PAULINE: Yes, Mr. Goodman.

3 MR. GOODMAN: Just for clari -- just
4 to provide an overview to everyone here,
5 we're doing an audit right now of Doral
6 Academy High School, it's a special
7 performance audit that was approved based
8 on questioning transactions that came up.

9 And my question is to Doug, did you
10 get the e-mail that I sent yesterday?

11 MR. RODRIGUEZ: Yes, I did.

12 MR. GOODMAN: Okay. Do you have the
13 answers?

14 MR. RODRIGUEZ: Mr. Goodman, the
15 questions that you posed to me, some have
16 been asked and answered. I had to go to
17 the board yesterday because some of the
18 questions that you posed come or rose to
19 the board level regarding approvals and
20 site plans. I had to get approval from
21 the board yesterday and it's a board item,
22 in order to show them the questions that

1 you're asking and also to get approval to
2 intend to offer my --

3 MR. GOODMAN: But do you have the
4 answers? Do you have the written answers?

5 MR. RODRIGUEZ: So we're not going to
6 be able to get you the information --
7 you're going to receive a letter later
8 today, we're going to need some additional
9 time to get you the questions --

10 MR. GOODMAN: Okay.

11 MR. RODRIGUEZ: -- answered.

12 MR. GOODMAN: What I need --

13 MR. RODRIGUEZ: Let me --

14 MR. GOODMAN: Go ahead, please
15 finish.

16 MR. RODRIGUEZ: And some of the
17 questions you posed, frankly, are
18 inappropriate. You're asking about my
19 personal finances, that's an inappropriate
20 question.

21 MR. GOODMAN: Okay. But what my
22 office is recommending is that -- well,

1 first of all, the school -- the school,
2 its governing board, are being
3 uncooperative in the audit and they have
4 not responded appropriately to the
5 questions posed. They are not -- they are
6 uncooperative in the audit. We have the
7 right to audit in the contract and my
8 recommendation would be not to continue
9 working with them under these
10 circumstances.

11 MR. RODRIGUEZ: May I just cite --
12 Ms. Mallon, can you just -- could you
13 explain to the committee how many hundreds
14 of pieces of paper we've provided already
15 with (inaudible).

16 MS. MALLON: Yes. We've submitted
17 numerous documents. We actually have a
18 Drop Box link that is full.

19 MR. RODRIGUEZ: So for Mr. Goodman to
20 say that --

21 MS. MALLON: So we have been
22 responsive.

1 MR. RODRIGUEZ: Yeah.

2 -- that we have not been responsive
3 is inaccurate on Mr. Goodman's part and
4 we're happy to share with the committee
5 the amount of documents that we have
6 provided to him.

7 Now, he's provided a second set of
8 questions, which he provided about a week
9 ago, 25 questions that he provided. The
10 board requested their questions in
11 writing. Mr. Goodman did not, refused to
12 provide the board their questions in
13 writing.

14 The only person he provided the
15 questions in writing was to me. Some of
16 the questions that Mr. Goodman is asking
17 rise to a board level. This audit was not
18 an audit of the entire school, it's based
19 on two transactions, two transactions,
20 he's well aware of that, and he's not
21 making the committee completely aware of
22 what's happening. And what the audit is

1 --

2 MR. GOODMAN: Go ahead.

3 MR. RODRIGUEZ: In fact, at the audit
4 committee, Mr. Goodman, Mr. Montes Dolca
5 and Mr. Miranda said that they do not
6 believe that there was anything illegal
7 that took place or have, but they want to
8 check on these two transactions, those
9 were the exact words.

10 So if he is misrepresenting what's
11 happening here today, then I don't
12 appreciate that, because he's received
13 hundreds of documents.

14 MR. GOODMAN: Okay. Well, first of
15 all, just for the record, 99.9 percent of
16 what he just said is inaccurate and
17 probably disingenuous, so I just need to
18 get that on the record.

19 I'm not going -- I'm not going to
20 respond to every point he made, but I do
21 want to get on the record that 99.9
22 percent inaccurate, disingenuous.

1 Again, the questions that were posed,
2 we bent over backwards to accommodate the
3 school and Mr. Rodriguez by putting the
4 questions in writing. Normally we don't
5 do that when we do an interview or, you
6 know, inquires.

7 He asked -- they asked for that, we
8 did, we did do that, we put the questions
9 in writing. None of the -- none of the
10 things that we've asked for are -- are --
11 everything that we've asked for is
12 something that the school, its governing
13 board, its management company, should be
14 able to provide within several hours or at
15 the most within a couple of days, okay.

16 So the fact -- things like -- things
17 like the loan agreements, loan agreements
18 that the school has, that should just be
19 in your file, you haven't provided them.

20 That's a very basic document.

21 MR. RODRIGUEZ: Would you like us to
22 go over what's been provided for the

1 committee?

2 MR. GOODMAN: No, I -- no.

3 MR. RODRIGUEZ: Because --

4 MS. PAULINE: Can I -- hold on, hold
5 on one second.

6 MR. RODRIGUEZ: -- for the record, if
7 you want the records --

8 MS. PAPA: We want the committee to
9 be fully aware of what we have already
10 provided.

11 MR. RODRIGUEZ: -- and how Mr.
12 Goodman has (inaudible).

13 MR. GOODMAN: No, we're not -- we're
14 not going to go through that.

15 MR. RODRIGUEZ: But you're bringing
16 it up.

17 MR. GOODMAN: We're not going to go
18 piece by piece.

19 MR. RODRIGUEZ: You brought it up,
20 Jon, nobody else did.

21 MR. GOODMAN: Listen --

22 MS. PAULINE: Jon, I'm not trying to

1 be -- I'm feeling a little uneasy because
2 you -- you said the word investigation.

3 MR. GOODMAN: No, audit.

4 MS. PAULINE: Audit, okay. So to me
5 that means the same thing, they're being
6 reviewed by an entity that has
7 investigative responsibilities.

8 MR. GOODMAN: Right.

9 MS. PAULINE: So I'm --

10 MR. GOODMAN: But it's an audit --
11 it's an audit in accordance with
12 government audit standards.

13 MS. PAULINE: Got it. I -- I got it,
14 I got it. But my concern is we're getting
15 into details of something that's being
16 reviewed by the auditor and I think we may
17 be going to that line.

18 MR. GOODMAN: Fair enough.

19 MS. PAULINE: Okay.

20 MR. GOODMAN: But I just want to put
21 on the record that my recommendation is
22 that -- well, first of all, that the

1 school and its governing board and
2 management company are not cooperating
3 with our audit and our right to audit
4 clause and they are not providing basic
5 information that they should be providing
6 quickly. They are not providing it, they
7 are stalling --

8 MR. RODRIGUEZ: Tiffanie --

9 MR. GOODMAN: -- and they are not
10 giving -- let me finish, please.

11 They are not giving us the
12 information. They are not cooperating
13 with the audit and I'm questioning and
14 recommending that, you know, we take
15 whatever appropriate action is. This
16 committee takes whatever appropriate
17 action is to not entertain further
18 contracts with -- with an entity that is
19 -- that is absolutely not cooperating with
20 its -- with its obligations right now
21 under its current contracts.

22 MR. RODRIGUEZ: Tiffanie, since he's

1 brought up the point --

2 MS. PAULINE: I will allow you to
3 respond.

4 MR. RODRIGUEZ: I'm sorry, we have to
5 respond because absolutely inaccurate.

6 Could you please respond, Collette,
7 with what's been provided.

8 MS. PAPA: Sure. This was January
9 29, 2013, the day of the audit and
10 budgeted committee meeting.

11 MS. PAULINE: Can we limit the
12 details to the degree that you can,
13 because --

14 MS. PAPA: We've provided -- we've
15 provided the following documents: Doral
16 Academy, Inc. Resolution for Recoverable
17 Grant; the District's first request letter
18 dated October 19, 2012; Doral's first
19 response letter dated November 9, 2012,
20 including the Recoverable Grant Agreement,
21 Doral Academy, Inc.'s Minutes of August 2,
22 2012 approving the recoverable grant

1 agreement; the Doral College 2012 course
2 catalog; Doral College dual enrollment
3 student application form; an AIA document
4 dated 2/9/2009 with the Doral Middle/High
5 School and Campus Construction Group, Inc.
6 for the Doral Middle/High cafeteria; AIA
7 document dated 11/18/2010 between Doral
8 Academy High School and Campus
9 Construction Group for the Doral classroom
10 wing additions; the landlord contribution
11 letter to Doral Academy, Inc. to the
12 School Development, LLC, dated July 3,
13 2012; board meeting minutes approving the
14 improvements, including the board meeting
15 minutes from March 3, 2009, September 30,
16 2010, September 2, 2010; the District's
17 request for additional information dated
18 November 26, 2012; Doral's response letter
19 dated December 14, 2012, and those
20 attachments were the Doral High budget of
21 2011/2012, Doral Academy, Inc.
22 consolidated audited financial of 2011 and

1 2012, Doral College dual enrollment
2 attendance, each course and semester, the
3 District's facility leasing practices, an
4 internal audit report of June 2007, and a
5 followup review report of March 2011, and
6 the MDPS School Board meeting minutes of
7 March 15, 2005, and the same minutes from
8 11/21/12.

9 MR. GOODMAN: And just a quick point
10 of clarification, a lot of what you just
11 said was not -- was not requested, you
12 just provided it.

13 MS. McNICHOLS: Jon, what's -- the
14 other thing, Jon, (inaudible).

15 MR. GOODMAN: Okay.

16 MS. McNICHOLS: I mean, honestly, if
17 there's going to be a back and forth and
18 we're going to be arguing about the facts
19 about who provided what, I mean,
20 (inaudible) and whether or not it's
21 appropriate, that's just not this forum.
22 That will be an argument that we have

1 somewhere else.

2 MR. MARTINEZ: May I ask --

3 MS. PAULINE: Yes, Mr. Martinez, yes.

4 MR. MARTINEZ: You know, I'm not --

5 I'm not involved with the charter school
6 process but I just have a simple question,
7 when you award a charter, does that
8 particular charter school receive capital
9 dollars, correct?

10 MS. PAULINE: If they're eligible.

11 MR. MARTINEZ: If they're eligible.

12 So every charter if they're eligible.

13 So --

14 MS. WILLIAMS: Every charter.

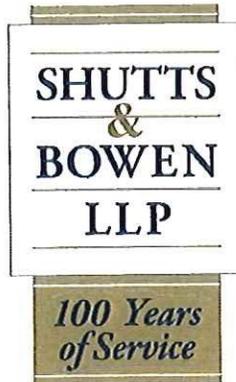
15 MR. MARTINEZ: -- in this case, these
16 five schools, have they received capital
17 dollars from us?

18 MS. WILLIAMS: They have the
19 potential.

20 MR. RODRIGUEZ: Not from the
21 District --

22 MS. WILLIAMS: Well, the new ones do.

APPENDIX F



KEVIN D. COWAN
PARTNER
(305) 379-9110 Direct Telephone
(305) 347-7710 Direct Facsimile

E-MAIL ADDRESS:
kcowan@shutts.com

November 14, 2013

Jose F. Montes de Oca
Chief Auditor
Miami-Dade County School Board
1450 NE 2nd Avenue
Miami, Florida 33132

**RE: Doral Academy Charter High School's Response, dated November 6, 2013,
to Draft Audit Report**

Dear Mr. Montes de Oca:

We have set forth below our Firm's responses to Doral Academy Charter High School's ("Doral") response to the draft audit report. Specifically, we have addressed comments contained on pages 9 through 11 of Doral's document. (For the sake of clarity, we have paraphrased Doral's comments in bold and provided our responses below.)

1) **Shutts & Bowen's view of the risk of Section 3.5 is overblown. There was never any real "risk" to Doral . . . there was always an underlying intent that the Landlord would reimburse/give the school the benefit of the investment by reimbursing the school at the end** To state the obvious, multi-million dollar reimbursement obligations usually are evidenced by documents and not "underlying intent." Indeed, these types of understandings are expressly set forth in leases at the time they are drafted.

2) **Shutts & Bowen ignores the pre-condition to termination, i.e., pay off of the loan.** Although we acknowledge this pre-condition to termination, our concern with this provision remains. Moreover, this pre-condition to termination also can be satisfied by substitution of collateral, which is expressly permitted under the Mortgage. Under the latter scenario, the Doral property could be replaced by another property as collateral for the Mortgage. Once that occurs, the Doral lease can be wiped out.

3) **Lease amendments do not need to be witnessed.** Leases and amendments almost always are witnessed. See Florida Statute Section 689.01. Although the statute is slightly vague regarding lease amendments, the better practice among seasoned real estate lawyers is to

MIADOCs 8393934 2

1500 Miami Center • 201 South Biscayne Boulevard, Miami, Florida 33131 • ph 305.358.6300 • fx 305.381.9982 • www.shutts.com

Jose F. Montes de Oca
Chief Auditor
November 14, 2013
Page 2

have lease amendments witnessed. In addition to the Lease Amendment dated July 3, 2012, the August 27, 2013 Amendment to Lease recently delivered also presents a similar issue. The signature of Landlord is witnessed but not that of Tenant.

4) **Landlord is liquid so "who" signed the Guaranty is not relevant.** Again to state the obvious, a guaranty is not enforceable against a guarantor who does not sign it. This point has nothing to do with whether Landlord is liquid.

5) **The incorrect signatory/ Landlord is a typographical error.** This requires no further comment or emphasis.

6) **Section 3.5 was not dangerous until the new improvements were built 8 years later.** A landlord's right to terminate is always dangerous to a tenant. It just becomes that much more dangerous as debt is incurred and capital improvements are made.

7) **The existing Non-Disturbance Agreement protects Tenant.** The Non-Disturbance Agreement in favor of Tenant relates to a Mortgage dated April 1, 2004 and a Promissory Note in the original principal amount of \$7,470,000. The cross-collateral issues arise in connection with trust documents relating to a \$53,700,000 loan agreement. It is unclear whether the existing Non-Disturbance Agreement protects Tenant with regard to both of the above loans or just the loan for \$7,470,000. Additional analysis of the trust documents would be required to determine conclusively if the Non-Disturbance Agreement provides adequate protection.

Sincerely,

Shutts & Bowen LLP



Kevin D. Cowan

KDC/lh

Miami-Dade County Public Schools Anti-Discrimination Policy

Federal and State Laws

The School Board of Miami-Dade County, Florida adheres to a policy of nondiscrimination in employment and educational programs/activities and strives affirmatively to provide equal opportunity for all as required by:

Title VI of the Civil Rights Act of 1964 - prohibits discrimination on the basis of race, color, religion, or national origin.

Title VII of the Civil Rights Act of 1964 as amended - prohibits discrimination in employment on the basis of race, color, religion, gender, or national origin.

Title IX of the Education Amendments of 1972 - prohibits discrimination on the basis of gender.

Age Discrimination in Employment Act of 1967 (ADEA) as amended - prohibits discrimination on the basis of age with respect to individuals who are at least 40.

The Equal Pay Act of 1963 as amended - prohibits gender discrimination in payment of wages to women and men performing substantially equal work in the same establishment.

Section 504 of the Rehabilitation Act of 1973 - prohibits discrimination against the disabled.

Americans with Disabilities Act of 1990 (ADA) - prohibits discrimination against individuals with disabilities in employment, public service, public accommodations and telecommunications.

The Family and Medical Leave Act of 1993 (FMLA) - requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to "eligible" employees for certain family and medical reasons.

The Pregnancy Discrimination Act of 1978 - prohibits discrimination in employment on the basis of pregnancy, childbirth, or related medical conditions.

Florida Educational Equity Act (FEEA) - prohibits discrimination on the basis of race, gender, national origin, marital status, or handicap against a student or employee.

Florida Civil Rights Act of 1992 - secures for all individuals within the state freedom from discrimination because of race, color, religion, sex, national origin, age, handicap, or marital status.

Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA) - Prohibits discrimination against employees or applicants because of genetic information.

Veterans are provided re-employment rights in accordance with P.L. 93-508 (Federal Law) and Section 295.07 (Florida Statutes), which stipulate categorical preferences for employment.

In Addition:

School Board Policies 1362, 3362, 4362, and 5517 - Prohibit harassment and/or discrimination against students, employees, or applicants on the basis of sex, race, color, ethnic or national origin, religion, marital status, disability, genetic information, age, political beliefs, sexual orientation, gender, gender identification, social and family background, linguistic preference, pregnancy, and any other legally prohibited basis. Retaliation for engaging in a protected activity is also prohibited.

MIAMI-DADE COUNTY PUBLIC SCHOOLS



Office of Management and Compliance Audits
1450 N. E. 2nd Avenue, Room 415
Miami, Florida 33132
Tel: (305) 995-1436 • Fax: (305) 995-1331
<http://mca.dadeschools.net>